

## RIGHT OF ENTRY AND LICENSE AGREEMENT

This RIGHT OF ENTRY AND LICENSE AGREEMENT (this "Agreement") dated as of July 28, 2017, is made and entered into by and between the TOWN OF WAYLAND, acting by and through its Board of Selectmen, a Massachusetts municipal corporation, having an address of 41 Cochituate Road, Wayland, MA 01778 (the "Licensor") and WP EAST ACQUISITIONS, L.L.C., a Georgia limited liability company having an address of 91 Hartwell Avenue, Lexington, MA 02421 (the "Licensee").

### BACKGROUND

- A. The Licensor is the owner of certain land in the Town of Wayland described on Attachment A hereto (the "Licensed Premises").
- B. The Licensor issued a Request for Proposals for the disposition and development of the Licensed Premises for affordable housing purposes (the "RFP"), pursuant to M.G.L. c. 30B.
- C. The Licensee's proposal in response to the RFP for the acquisition of the Licensed Premises was accepted by the Licensor.
- D. Licensor and Licensee have, on or about the date hereof, entered into a Land Disposition Agreement (the "LDA") for the sale and purchase of the Premises.
- E. Pursuant to the LDA, Licensor and Licensee are entering into this Agreement to facilitate and govern Licensee's access to the Licensed Premises to perform certain tasks set forth in the work plan to be provided by the Licensee and approved by Licensor hereunder (the "Work Plan").

### AGREEMENTS

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

- 1. Grant of License, Terms, Purpose and Use.
  - a. The Licensor hereby grants a right of entry and license to the Licensee to use the Licensed Premises for the sole purposes set forth herein and in the Work Plan (the "Licensed Activities"), subject to the terms and conditions set forth herein.
  - b. The right of entry and use of the Licensed Premises is specifically granted to the Licensee, its contractors, consultants, agents, and employees, collectively referred to herein as the "Licensee," solely for the implementation and completion of the tasks set forth in the Work Plan and for no other purposes. Said rights may not be assigned by the Licensee without the prior written consent of the Licensor, which consent may be withheld for any reason or for no reason, at Licensor's sole and absolute discretion. In the event that the Licensee assigns its rights

under this Agreement to another party with Licensor's approval, the Licensee shall remain liable for its obligations and duties contained herein.

c. The right of entry and use of the Licensed Premises by the Licensee hereunder shall be exercised beginning as of the date the Licensor approves in writing the Work Plan, such approval not be unreasonably withheld, conditioned or delayed (but subject to other terms of this Agreement) and such rights shall continue throughout the term of the LDA, unless either the LDA or this Agreement are earlier terminated by the parties hereto. The parties acknowledge and confirm the rights being granted hereunder are a license and no greater rights in the Licensed Premises are being granted hereunder. The parties acknowledge and confirm that neither this Agreement nor the license granted hereunder shall be construed to create or vest in the Licensee any easement, estate or legal interest in the Licensed Premises but only the limited right of possession on the terms herein described.

d. The Licensed Premises and the activities undertaken thereon by the Licensee shall be subject to inspection by representatives of the Licensor at any time, and from time to time, without prior notice.

e. The rights of the Licensee granted hereunder shall be exercised solely for the purposes set forth in this Agreement, and for no other purposes.

## 2. Terms, Costs and Restoration.

a. Licensee shall perform all Licensed Activities, including without limitation all work under the Work Plan and all geotechnical and environmental site investigations, strictly in compliance with the provisions of this Section II.

b. The Licensee shall be solely responsible for all costs and expenses associated with the exercise of the rights granted under this Agreement, including without limitation any costs associated with obtaining any permits, licenses or similar approvals necessary to undertake and/or complete the work contemplated herein.

c. The Licensee shall provide prompt notification to Licensor of any release or threat of release of oil or hazardous materials discovered during Licensee's Activities, including without limitation its work under the Work Plan and its geotechnical or environmental site investigations, that is not already disclosed in any of the environmental reports or other materials provided to the Licensee from the Licensor in connection with the RFP; provided any such notice and the information provided in connection therewith shall be without representation or warranty of any kind and Licensor hereby releases Licensee from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which Licensor may have against Licensee (and Licensee's officers, directors, members, shareholders, trustees, employees and agents) at any time by reason of the existence of oil or hazardous materials discovered during Licensee's Activities, provided, however, in no event shall Licensor be responsible for or hold Licensee harmless from any exacerbation of pre-existing hazardous materials existing on the Property as a result of

Licensee's Activities or any negligence or willful misconduct of Licensee in performing Licensee's Activities.

d. Except as provided in the Work Plan, in no event shall the Licensee perform any subsurface investigations or invasive testing of the Licensed Premises, or install any soil or groundwater monitoring wells or test pits on the Licensed Premises ("Non-Work Plan Invasive Testing"), without the Licensor's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Licensor shall grant its approval or disapproval of any requested Non-Work Plan Invasive Testing within 5 business days after Licensee makes a request for same. Any request for approval of Non-Work Plan Invasive Testing shall include with reasonable detail the proposed scope of work which is the subject thereof. If Licensor objects to any requested invasive testing, Licensee shall be required to provide to Licensor within 2 business days its rationale for needing to perform such testing. Licensor shall grant its approval or disapprove such invasive testing within 5 business days of receipt of Licensee's rationale and, if Licensor objects to said invasive testing, Licensee shall have the right to terminate the LDA, in which case the Additional Deposit (as defined in the LDA) shall be released to Licensee and the Initial Deposit (as defined in the LDA) retained by Licensor, unless Buyer's request for Non-Work Plan Invasive Testing is not submitted until after the initial Due Diligence Period set forth in the LDA (to wit, ninety (90) days after the date hereof), in which case the entire Deposit then on deposit shall be released to Licensor. If such approval is granted, Licensee shall be solely responsible for decommissioning and removing all such wells and test pits in accordance with the Massachusetts Department of Environmental Protection (DEP) guidelines. Following the completion of Licensee's geotechnical and environmental site investigations, the Licensee shall remove all materials, groundwater monitoring wells, equipment and machinery and other items brought on to the Licensed Premises by the Licensee and shall restore the Licensed Premises to substantially the same condition it was in prior to the exercise by the Licensee of the rights granted hereunder; provided, however, in no event shall Licensee be obligated to replace or restore any soils or other fill materials removed, relocated or displaced as part of its Licensed Activities so long as such removal, relocation or displacement (i) is conducted in a manner consistent with the Work Plan, (ii) does not interfere with the Licensor's operation of school bus parking on the Licensed Premises and (iii) is not relocated to the portion of the Licensed Premises that contains the septage facility. In the event the Licensee in writing waives any right to terminate the LDA and unconditionally confirms that it will close on the purchase of the Licensed Premises in its as is condition and in accordance with the LDA, the Licensor may in writing waive the Licensee's obligation to restore the Licensed Premises and remove the groundwater monitoring wells. Otherwise, the Licensor shall deduct from any funds of the Licensee held on deposit by the Licensor in connection with this Agreement, the RFP or the LDA any amounts expended by the Licensor to restore the Licensed Premises as required hereunder, including without limitation, to decommission and remove any groundwater wells installed by the Licensee on the Licensed Premises. The Licensee shall coordinate any removal and/or relocation of existing groundwater monitoring wells with the Licensor.

e. Licensee shall provide to Licensor, without representation or warranty of any kind, copies of all third-party reports and plans generated as a result of Licensee's work under the Work Plan, including without limitation all geotechnical and environmental site investigations by the Licensee, within ten (10) days of completion (specifically excluding any internally-prepared memoranda or reports or communications which are subject to the attorney-

client privilege); provided, however, that if any such work or investigations discovers any imminent hazard, Licensee shall immediately notify Licensor thereof. Licensee shall not report any release or threat of release of oil or hazardous materials reflected in such reports or plans, or otherwise identified during any Licensed Activities under this Agreement, to any government agency unless Licensee reasonably determines that it has a legal obligation to report such any release or threat of release of oil or hazardous materials to a government agency and Licensee has first notified the Licensor of the release or threat of release of oil or hazardous materials prior to making such report.

f. All materials resulting from any Licensed Activities under this Agreement, including without limitation (if Licensor grants Licensee permission to perform subsurface investigations or invasive testing of the Licensed Premises) all samples and any materials that may contain oil or hazardous materials that result from any Licensed Activities at the Licensed Premises shall become the property and responsibility of the Licensee, and shall be properly managed, transported and disposed of. At no time will Licensor assume or retain any responsibility or liability for the disposal of such materials and the removal of such materials from the Licensed Premises will remain the sole obligation of the Licensee, except to the extent that any liability arising out of the disposal or removal of such materials is the result of the gross negligence, willful misconduct or breach of contract of the Licensor or its agents.

### 3. Insurance and Indemnification.

a. Licensee shall carry and shall cause any contractor, consultant or agent engaged by it to perform the Licensed Activities at the Licensed Premises to maintain, at no cost to the Licensor, insurance in amounts as set forth below and with companies licensed and/or authorized to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-,VII" or better and otherwise satisfactory to Licensor at Licensee's or such contractor's, consultant's or agent's own cost and expense as the case may be, to protect against claims under any Worker's Compensation Act; against claims for damages because of bodily injury including sickness, disease or death; against claims for damages because of injury to or destruction of tangible property; against claims for damages because of personal injury, or other covered conditions; and against claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which Licensee or any such contractor, consultant or agent engaged may be legally liable.

- (a) Commercial general liability, including coverage for bodily injury, personal injury, property damages and completed operations coverage in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- (b) Automobile liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1,000,000 per occurrence combined single limit;
- (c) Workers' compensation for all its employees, as required by statute, with employers' liability of \$500,000.00 or more including \$100,000 accident and \$100,000 disease;

- (d) Excess/Umbrella Liability having limits of \$1,000,000 per occurrence and \$5,000,000 aggregate; and
- (e) Professional liability coverage of at least \$1,000,000 per claim and \$1,000,000 aggregate for any Licensed Site Professional, Professional Engineer, and other professional performing professional services as part of the Licensed Activities.

Prior to exercising any rights hereunder or entering the Licensed Premises, the Licensee shall furnish the Licensors with certificates of insurance showing that Licensee has complied with this Section, which certificates shall name Licensors as Additional Insured for the insurance required under (a), (b), and (d), above, and where commercially available from Licensee's insurers which otherwise satisfy the requirements and ratings' standards set forth herein, all such policies shall contain a provision that written notification of cancellation of the insurance policies required hereunder shall be given to Licensors and Licensee thirty (30) days prior to such cancellation, with the exception of ten (10) days for cancellation due to nonpayment of premium.

b. To the fullest extent permitted by law, the Licensee shall defend, indemnify and hold the Licensors, its agents, subcontractors, boards, officials, and employees harmless from and against any and all claims, defense costs, including attorneys' fees, damages and other liabilities, including, but not limited to, bodily injury, damage to property and personal injury, arising from the acts or omissions of the Licensee or its agents, employees or contractors in performing the Licensed Activities or any other inspections, tests or other work in, on or about the Licensed Premises; provided however, that the foregoing indemnity shall not apply to and shall specifically exclude, any claims, defense costs, including attorneys' fees, damages and other liabilities arising out of the Licensors' negligence and willful misconduct and/or the discovery or existence of any pre-existing conditions at the Property ("Pre-Existing Conditions") unless Licensee or its agents, employees or contractors in performing the Licensed Activities has exacerbated such pre-existing conditions ("Exacerbate") and in such a case, Licensee shall indemnify Licensors against all claims, defense costs, including attorney's fees, damages and other liabilities arising out of the exacerbation of such conditions.

c. The Licensee shall be responsible for any release of oil or hazardous materials caused by the Licensee or its agents, employees, consultants or contractors, and the Licensee will be responsible for environmental conditions Licensee or its agents, employees, consultants or contractors create at the Licensed Premises while acting pursuant to this Agreement. Notwithstanding the foregoing, Licensee shall not be responsible for the mere discovery of Pre-Existing Conditions, except to the extent Licensee or its agents, employees or contractors Exacerbate such Pre-Existing Conditions through the performance of the Licensed Activities.

d. The Licensors may rely upon, use or disseminate any information, test results or reports generated or provided by the Licensee or its agents, employees, consultants or contractors pursuant to the work contemplated herein without the prior written consent of the Licensee.

#### 4. Conduct.

a. During the exercise of rights hereby granted, the Licensee shall at all times take, and shall cause its agents, employees, consultants and contractors at all times to take, reasonable

steps to conduct itself and themselves so as not to cause waste or damage to the Licensed Premises, and the Licensee and its agents, contractors and assigns shall not in any way interfere with operations of the Licensor. The Licensee shall observe and obey all applicable federal, state, and local laws, statutes, ordinances, rules and regulations in the conduct of its activities hereunder, and shall observe and comply with all licensing requirements provided by the Licensor, or as may be contained in the Work Plan. The Licensee shall notify the Licensor immediately upon the violation of any such law, statute, ordinance, regulation, or requirement, upon the release or threatened release of any oil or hazardous material as said terms are defined in Chapter 21 E of the Massachusetts General Laws or the Massachusetts Contingency Plan promulgated pursuant thereto.

b. Unless otherwise provided in the Work Plan, the Licensee shall submit to the Licensor for the Licensor's approval an anticipated general schedule of activities to be conducted under this Agreement prior to the exercise of Licensee's rights hereunder.

c. All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by recognized national overnight courier service, or mailed postage prepaid, by registered or certified mail, addressed as follows or when transmitted by facsimile to the facsimile number for each party set forth below, or when transmitted by email to the email address for each party set forth below between 9:00 A.M. and 5:00 P.M Eastern Standard Time on a business day provided that an original of the transmission be sent overnight consistent with above:

If to Buyer: c/o Wood Partners  
91 Hartwell Avenue  
Lexington, MA 02421  
Attn: Jim Lambert, Director  
Email: [Jim.Lambert@woodpartners.com](mailto:Jim.Lambert@woodpartners.com)

with a copy to: Andrew R. Allen  
Alston & Bird LLP  
1201 W. Peachtree Street  
Atlanta, GA 30309  
Email: [drew.allen@alston.com](mailto:drew.allen@alston.com)

and with a copy to: c/o Wood Partners  
636 W. Yale Street  
Orlando, Florida 32804  
Attention: Sean Reynolds  
Telephone: (407) 982-2517  
E-mail: [sean.reynolds@woodpartners.com](mailto:sean.reynolds@woodpartners.com)

If to Seller: Nan Balmer  
Town Administrator  
Town of Wayland  
Wayland Town Building

41 Cochituate Road  
Wayland, MA 01778  
Fax: 508-358-3627

with a copy to: Stephen D. Anderson  
Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109  
Fax: 617.621.6610

and KP Law, P.C.  
101 Arch Street  
Boston, MA 02110

or in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or one (1) day after when deposited with a nationally recognized overnight courier service or three days after deposit with the U.S. Postal Service, except that where under this Agreement any time period is specified to commence from notice, such time period shall not be deemed to commence until, according to applicable records of the courier service or U.S. Postal Service, delivery of such notice was first attempted. Notices which are given by either party may be given by the attorney for such party without the signature of such party.

5. Miscellaneous.

a. All provisions of this Agreement assigning obligations and allocating responsibility or liability between the Licensee and the Licensor shall survive the completion of the work set forth in the Work Plan and the expiration of this Agreement.

b. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

c. This Agreement represents the entire and integrated agreement between the Licensor and the Licensee and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to the subject matter hereof.

d. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Agreement shall remain enforceable to the fullest extent permitted by law.

e. Any modification or amendment to this Agreement shall be in writing and duly executed by both parties hereto to be effective.

f. In the event that either party materially breaches this Agreement, the non-breaching party shall have the right to unilaterally terminate the Agreement by serving a written notice of termination upon the breaching party via certified mail.

g. The Licensee will not place any liens or permit any liens to be placed upon the Licensed Premises related to the work contemplated herein and shall immediately discharge any such liens.

[SIGNATURE PAGE FOLLOWS]



EXECUTED under seal as of the date first written above.

**LICENSOR:**

TOWN OF WAYLAND

By: Nan Balmer  
Name: NAN BALMER  
Title: TOWN ADMINISTRATOR

**LICENSEE:**

WP EAST ACQUISITIONS, L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED under seal as of the date first written above.

**LICENSOR:**

TOWN OF WAYLAND

By: \_\_\_\_\_

Name:

Title:

**LICENSEE:**

WP EAST ACQUISITIONS, L.L.C.

By:  \_\_\_\_\_

Name: James Lambert

Title: vice president

## **Attachment A**

### **Licensed Premises**

A certain parcel of land consisting of approximately 8.24 acres, commonly known as 484-490 Boston Post Road, Wayland, Middlesex County, Massachusetts, shown as "Lot A", "Lot C", and "Lot E" on that certain plan entitled "ANR Subdivision Plan Assessors Map 22, Lot 3, Lot 6 & Lot 7 Boston Post Road Wayland, Massachusetts" prepared by WSP Transportation & Infrastructure, dated June 1, 2015.

**Attachment B**

Work Plan

(Attach Work Plan if finalized at time of execution of Agreement)

**Alta at River's Edge Due Diligence Work Plan**  
WP East Acquisitions, LLC

- **Environmental:**

- Soil and Debris Pile Evaluation
  - Sampling of 40,000 C.Y. Stockpile
    - Grade the large stockpile to reduce the pile height and to facilitate the visual inspection of the pile by the environmental and geotechnical engineers. Excavate test pits through the remaining ungraded lower portion of the pile to a depth of approximately 15 feet. Collect up to 40 samples of the pile material for disposal characterization analysis. Approximately one sample per 1,000 cubic yards is proposed and off-site disposal facility acceptance may require analysis of more samples given the estimated volume of material.
    - Samples of soil will be collected for asbestos analysis to evaluate the potential for asbestos containing materials (ACM) to be present in the stockpile.
  - Sampling of 2,300 C.Y. Stockpile
    - Collect 3 samples from the 2,300 C.Y. Stockpile. Sample collection, analysis and documentation will be conducted as described in the 40,000 C.Y. sampling scope above.
  - Sampling of 4,500 C.Y. Stockpile
    - Collection of 5 samples from the 4,500 C.Y. Stockpile. Sample collection, analysis and documentation will be conducted as described in 40,000 C.Y. sampling scope above.
- Firing Range Soil Samples
  - Collect approximately 6 borings to an approximate depth of 2 feet below grade. Borings will be advanced using manual direct-push equipment, shovels, and/or hand augers. The Consultant will screen soil in the field using an x-ray fluorescence analyzer.
- Groundwater Evaluation
  - Install up to six 2-inch diameter, flush mounted PVC groundwater monitoring wells to a maximum depth of 35 feet. The wells are installed by direct-push drill rig. Continuous soil sampling will be conducted from the ground surface to the bottom of the boring. Following well installation the Consultant will develop the monitoring wells using standard well development techniques. We have assumed that the purged water can be disposed of on-site and will not require containerization. Monitoring well casings will be surveyed to an arbitrary site datum established by the Consultant.
  - After at least 72 hours from well development, we will collect groundwater samples from the newly installed wells as well as the three existing groundwater monitoring wells. Samples will be collected using low-flow sampling techniques.
  - Groundwater samples will also be collected the three existing wells, if the wells still exist and are functioning and accessible.
- Soil Vapor Sampling
  - Install 6 temporary soil vapor points using the post run-tubing or equivalent method. Soil vapor samples will be collected by drawing soil vapor through

tubing using a 4-gas meter to purge the tubing of entrained atmospheric air and to evaluate potential methane concentrations in soil gas. Once the 4-gas meter has completed purging the tubing, it will be shut off (valve closed) and a sample of the soil vapor will be collected directly into laboratory supplied container.

- Methane and Radon Intrusion
  - Subsurface radon sampling is not currently available and will be evaluated once construction of the building has progressed sufficiently to allow such sampling. It is recommended that construction include radon resistant construction techniques to lower the risk of radon intrusion into the building. Costs are included in this task to provide recommendations for building construction.
- Site Soil Quality
  - Investigate the areas in the vicinity of 6 former USTs, sand filtration bed, wastewater infiltration beds, hazardous waste/materials storage shed, and pad-mounted electrical transformers. Advance up to 10 soil borings to a maximum depth of 10 feet.
- Hazardous Materials Survey
  - Pre-demolition surveys will be conducted to identify ACMs, LBP, and Regulated Materials/Universal Wastes, which will be required to be removed/abated in accordance with local, Commonwealth, and Federal regulations prior to the demolition activities.
    - Asbestos Containing Material Inspection Services
      - Perform an inspection of accessible interior and exterior areas of the Site building to record the type, quantity, and condition of suspect ACM present in the survey area.
      - Assume the collection of approximately fifty (50) bulk material samples.
      - Conduct a visual inspection for potential foundation waterproofing mastic at three (3) representative locations on the exterior of the Site building. The limited exploratory activities will be conducted utilizing a shovel to a depth of approximately two (2) feet below surface grade.
      - Inspect the interior and exterior of the Site Building to document and collect paint chip samples from different colored painted surfaces for lead analysis. We will collect up to five (5) paint chip samples for analysis.
      - Conduct a Regulated Materials/Universal Wastes (other than suspect ACMs and LBPs) at the Site Building. The assessment will consist of a visual inspection for evidence of the following (but not limited to): polychlorinated biphenyl (PCB)-containing light ballasts, PCB-containing oils, fluorescent light bulbs, mercury switches, refrigerants, ozone-depleting substances, batteries, above ground storage tanks, etc. The information collected will include: type of material, container type/size, and the approximate quantity of the material. The documented Regulated Materials and quantities of such will be recorded in Chart form. No testing of the regulated materials/universal wastes will be performed.

- **Geotechnical:**

- A geologist will be on-site to observe test pits and borings advanced by the environmental consultant to record geotechnical specific information. The geologist will on-site time to document the conditions encountered in the explorations by others for five days.
- Conduct four laboratory grain-size tests on samples collected from the test borings and test pits to aid visual classification and to estimate preliminary infiltration rates for storm water recharge.
- Test borings to further investigate subsurface conditions if depth to natural soils is highly variable or in question or if further exploration of the existing soil piles is appropriate.
- Additional test pit explorations if depth to natural soils is in question or if further exploration of the existing soil piles is appropriate.

- **Survey:**

- An ALTA survey of the site will be completed.
- A wetlands delineation will be completed.
- A survey of the Rt. 20 "shoulder" may be completed in order to define the water line installation work.