

PROPERTY ADDRESS:

VACANT PROPERTY LOCATED ON THE SOUTH SIDE OF
FERRY ROAD WEST OF ILLINIOS ROUTE 59 AND
PART OF THE IRON GATE MOTOR CONDOS DEVELOPMENT
LOCATED AT 2228 FERRY ROAD, NAPERVILLE IL 60563

P.I.N.

07-04-203-024 [FORMERLY KNOWN AS 07-04-203-022] [PART OF]

RETURN TO:

CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR IRON GATE MOTOR CONDOS
PHASE 2A AND PHASE 2B**

This Owner's Acknowledgement and Acceptance Agreement for Iron Gate Motor Condos ("Agreement") pertaining to vacant real property on Ferry Road, Naperville, IL 60563, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("City" or "City of Naperville"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and High Point Investments, Inc., ("OWNER AND DEVELOPER"), with offices at 2228 Ferry Road, Suite #101, Naperville, IL 60563. The City and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

RECITALS

A. Lot 1 of Iron Gate Motor Condos Subdivision is located west of Illinois Route 59 on the south side of Ferry Road within the corporate limits of the City of Naperville comprised of parcel identification numbers 07-04-203-024 [formerly known as 07-04-203-022] and 07-04-205-001 through 07-04-205-164 (hereinafter referred as the "SUBJECT PROPERTY").

B. The SUBJECT PROPERTY is subject to the terms and conditions set forth in the following ordinances ("Iron Gate Ordinances"), approved for the SUBJECT PROPERTY by the Naperville City Council in 2013, 2014, 2015 and 2017:

- | | |
|------------------|---|
| Ordinance 13-156 | An ordinance approving the Preliminary/Final Subdivision Plat for Iron Gate Motor Condos; |
| Ordinance 13-157 | An ordinance approving a conditional use for a planned unit development (PUD), Preliminary/Final Planned Unit Development Plat, and certain conditional uses in the I (Industrial) District for Phase 2 in accordance with Section 6-8C-3 (Conditional Uses) of the Naperville Municipal Code for Iron Gate Motor Condos; |

- Ordinance 14-132 An ordinance granting variances from Section 5-1A (Building Code) of Title 5 (Building Regulations) of the Naperville Municipal Code for Iron Gate Motor Condos; and
- Ordinance 15-145 An ordinance approving a major change to the Iron Gate Motor Condos PUD for Iron Gate Phase 2A at 2212 Ferry Road;
- Ordinance 15-146 An ordinance approving a conditional use in the I (Industrial) zoning district for motor vehicle sales in conjunction with a planned unit development for Iron Gate Phase 2A;
- Ordinance 15-147 An ordinance approving a major change to the Iron Gate Motor Condos PUD for Iron Gate Phase 2A at 2212 Ferry Road; and
- Ordinance 17-004 An ordinance granting a signage variance from Section 5-4-5:2.4 (Commercial Signs: Monument Signs: Monument Sign Height) of the Naperville Municipal Code for the property at 2212 Ferry Road (Iron Gate Motor Plaza).

C. Pursuant to the Iron Gate Ordinances, a portion of the SUBJECT PROPERTY has been developed with thirteen (13) car-condo buildings known as Iron Gate Motor Condos Phase 1, and two (2) commercial buildings, known as Iron Gate Motor Condos Phase 2A, Buildings 1 and 2.

D. OWNER AND DEVELOPER has petitioned the City for approval of a major change to the Iron Gate Motor Condos PUD, a Final PUD Plat for Iron Gate Motor Condos Phase 2A, Building 3 and Phase 2B (“**Final PUD Plat**”), a use deviation in a PUD to allow for single-family attached residential units and live-work units in the I (Industrial) District, and other associated deviations in order to develop the following:

- i. A commercial building known as Iron Gate Motor Condos Phase 2A, Building 3; and
- ii. Six (6) townhome buildings including a total of fourteen (14) live-work units and thirty-seven (37) single-family attached residential units known as Iron Gate Motor Condos Phase 2B (“**PHASE 2B PROPERTY**”).

E. Iron Gate Motor Condos Phase 2A, Buildings 1 and 2, Iron Gate Motor Condos Phase 2A, Building 3, and Iron Gate Motor Condos Phase 2B (as depicted and legally described and depicted on **Exhibit A**) are collectively referred to herein as “**PHASE 2A and PHASE 2B PROPERTY**”.

F. On June 15, 2021, the Naperville City Council approved the following ordinance for the SUBJECT PROPERTY:

Ordinance 21-____ An ordinance approving a major change to the Iron Gate Motor Condos PUD, a Final PUD Plat for Iron Gate Motor Condos Phase 2A, Building 3, and Phase 2B, and variances deviations (“**Major Change Ordinance**”).

Ordinance 21-____ An ordinance approving a stormwater variance for Iron Gate Phase 2A, Building 3, and Phase 2B.

G. By entering into this Agreement, the City is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the PHASE 2A AND PHASE 2B PROPERTY, the OWNER AND DEVELOPER shall be subject to and shall fulfill all conditions set forth or referenced herein, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY, including but not limited to the Iron Gate Ordinances and the Major Change Ordinance.
3. **Development of the PHASE 2A AND PHASE 2B PROPERTY.** OWNER AND DEVELOPER shall construct all improvements related to the development of the PHASE 2A AND PHASE 2B PROPERTY in compliance with final engineering plans prepared by CEMCON Ltd., dated December 16, 2020, last revised _____, 2021 (“**Final Engineering Plans**”) at its sole cost unless otherwise provided herein.
4. **School Donation.** OWNER AND DEVELOPER agrees to abide by the school donation provisions set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of) of the Naperville Municipal Code, as amended from time to time. Further, OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required school donation pursuant to the “Per Permit Payment” provisions set forth in Section 7-3-5:5.2.2 of the Naperville Municipal Code for the proposed fourteen (14) live-work units and thirty-seven (37) single-family attached residential units on the PHASE 2A AND PHASE 2B PROPERTY. Said Per Permit Payment shall be calculated based on

the attached single-family category in the school donation table set forth in Section 7-3-5 of the Naperville Municipal Code in effect at the time of the building permit issuance and shall be made prior to issuance of the building permit. Payment of the required school donation shall not be paid under protest, or otherwise objected to.

5. **Park Donation.** OWNER AND DEVELOPER agrees to abide by the park donation provisions set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of) of the Naperville Municipal Code, as amended from time to time.

As confirmed by the letter dated June 2, 2021 from the Naperville Park District attached hereto as **Exhibit B**, OWNER AND DEVELOPER and the Naperville Park District are in the process of finalizing an agreement relative to land-cash payments due for residential units to be located on the PHASE 2B Property pursuant to Section 7-3-5:12.12.7 of the Naperville Municipal Code. Said agreement (the "**Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B**") shall be subject to approval by the City which approval right is delegated to the City Attorney. Payment of the agreed upon cash donation shall be made prior to issuance by the City of a building permit for each dwelling unit and shall not be paid under protest, or otherwise objected to.

The Final PUD Plat shall not be recorded until the Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B has been finalized, fully executed, and attached to this Agreement as **Exhibit C**.

The Final PUD Plat shall include a note referencing the existence of the Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B.

6. **Use Restrictions for PHASE 2B PROPERTY.**

- 6.1 **Wilmette Townhomes.** Pursuant to the Major Change Ordinance, fourteen (14) live-work units adjacent to Ferry Road, labeled as "Future Wilmette Live-Work Residence" on the Final PUD Plat (herein "**Live-Work Units**"), shall be permitted subject to the requirements set forth and referenced below:

Live-Work Units shall include units which have: (i) non-residential uses on the first floor which are restricted to the uses set forth on Exhibit E attached hereto, and only residential uses on all other floors; or which have (ii) residential uses on all floors.

For those Live-Work Units referenced in sub-romanette (i) above: (a) there must be common ownership of the Live-Work Unit; and (b) the tenant or an employee of the tenant of the non-residential use must reside in the Live-Work Unit. Evidence of compliance with these requirements shall be

provided in writing to the City Zoning Administrator's satisfaction within seven (7) calendar days of a request therefor.

Finally, any proposed non-residential use on the 1st floor of a Live-Work Unit shall require submission of a building permit application and issuance of a building permit from the City prior to commencement of any construction activities, and issuance of an occupancy permit prior to commencement of the proposed use.

- 6.2 **Kenilworth and Glencoe Townhomes.** The thirty-seven (37) single-family attached townhome units, labeled as "Future Kenilworth Residence" and "Future Glencoe Residence" on the Final PUD Plat, shall contain residential uses only. Non-residential uses are prohibited in those units.
7. **Fees Due.** OWNER AND DEVELOPER shall pay all fees (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code as amended from time to time, including but not limited to the following:
- 7.1 **Engineering Review Fee:** \$14,423.09 (1.65% of the approved engineer's cost estimate). This fee is due prior to recording the Final PUD Plat.
- 7.2 **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, OWNER AND DEVELOPER shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- 7.3 **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND DEVELOPER shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
8. **Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of \$961,539.26 (110% of the approved engineer's cost estimate) which guarantees the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("Public Improvements"). Financial surety shall be received and approved prior to issuance of a site development permit. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, the OWNER AND DEVELOPER shall remain obligated for completion of said Public Improvements and/or (at the City's sole

discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the City, the OWNER AND DEVELOPER shall provide the City with a maintenance surety for the Public Improvements in a form approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

As to any surety, or maintenance surety, provided by the OWNER AND DEVELOPER to the City hereunder, the OWNER AND DEVELOPER agrees that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) OWNER AND DEVELOPER shall be liable to pay the City's reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the City to draw on said surety.

9. **Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Final PUD Plat has been recorded and until the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

10. **General Conditions.**

- 10.1 **Binding Effect.** City and OWNER AND DEVELOPER acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the City and the OWNER AND DEVELOPER and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.
- 10.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
- 10.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 10.4 **Exhibits.** All exhibits referenced herein are incorporated herein and made part hereof.
- 10.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

- 10.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 10.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 10.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 10.13 hereof and shall terminate, without further action by either Party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.
- 10.9 **Automatic Expiration.** If the final plat of subdivision for the SUBJECT PROPERTY is not recorded within five (5) years of the date of approval of the ordinance approving the final plat of subdivision and this Agreement by the City Council, the final plat of subdivision and this Agreement shall automatically lapse and become null and void without further action by the City.
- 10.10 **Survival.** The terms and conditions set forth in the following paragraphs of this Agreement shall survive the expiration or termination of this Agreement: 1 through 9 and 10.1 through 10.6 and 10.10.
- 10.11 **Authority to Execute/OWNER AND DEVELOPER.** The undersigned warrants that he/she is the OWNER AND DEVELOPER of the SUBJECT PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER of the SUBJECT PROPERTY in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.
- 10.12 **Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.
- 10.13 **Effective Date.** The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by both Parties hereto.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE

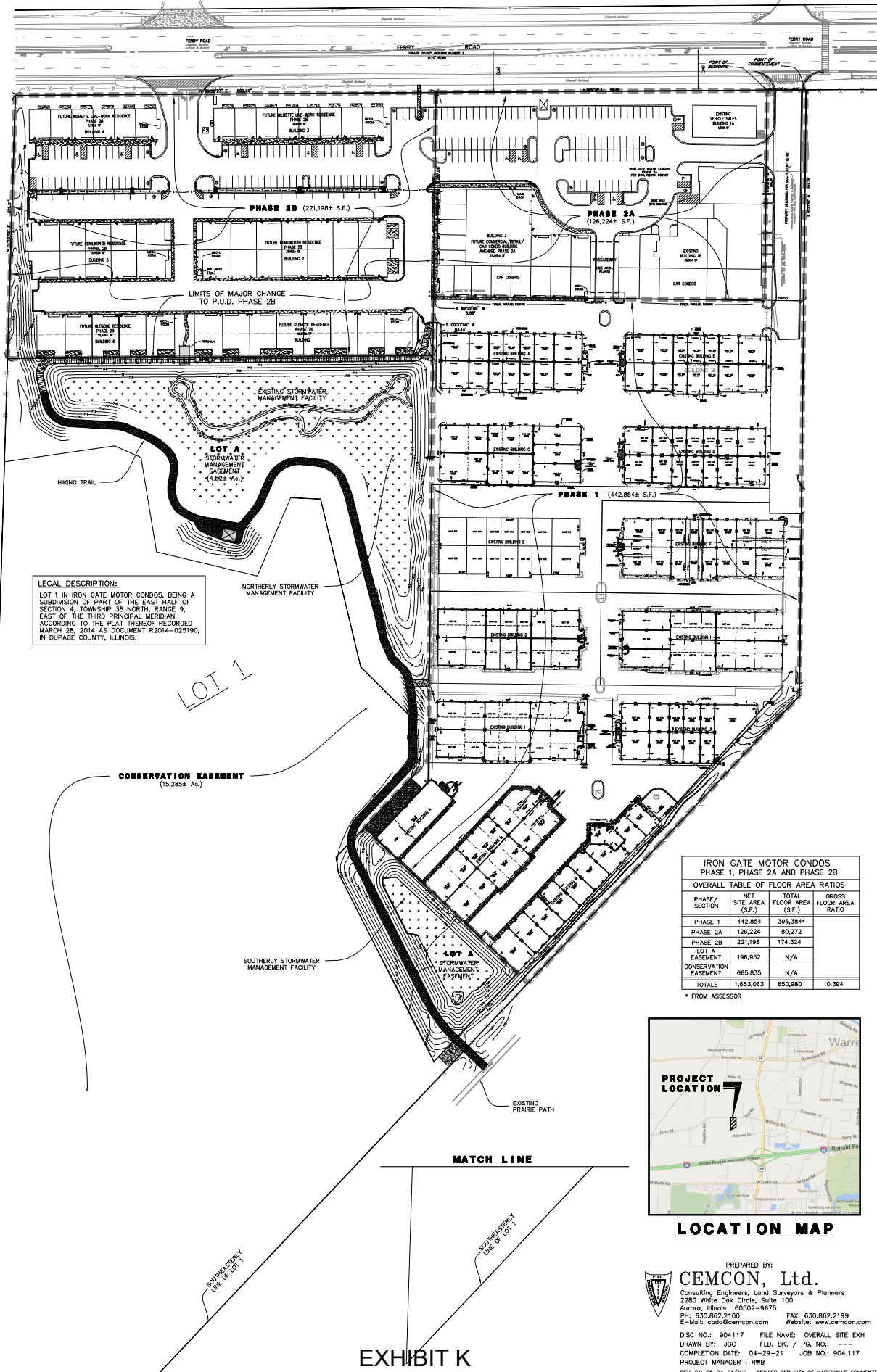
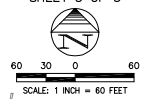
By: _____
Douglas A. Krieger
City Manager

ATTEST:

By: _____
Pam Gallahue, Ph.D.
Director of Community Services

Date: _____

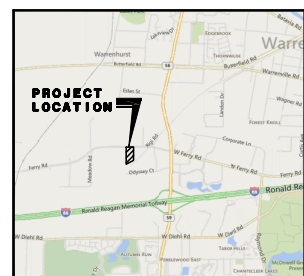
P.U.D. EXHIBIT PLAT FOR IRON GATE MOTOR CONDOS



LEGAL DESCRIPTION:
 LOT 1 IN IRON GATE MOTOR CONDOS, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 2014 AS DOCUMENT R2014-025190, IN DUPAGE COUNTY, ILLINOIS.

IRON GATE MOTOR CONDOS PHASE 1, PHASE 2A AND PHASE 2B			
OVERALL TABLE OF FLOOR AREA RATIOS			
PHASE / SECTION	NET SITE AREA (S.F.)	TOTAL FLOOR AREA (S.F.)	GROSS FLOOR AREA RATIO
PHASE 1	442,854	396,384*	
PHASE 2A	126,224	80,272	
PHASE 2B	221,198	174,324	
LOT A EASEMENT	196,952	N/A	
CONSERVATION EASEMENT	665,835	N/A	
TOTALS	1,653,063	650,980	0.394

* FROM ASSESSOR



LOCATION MAP

NOT TO BE CREATED UNTIL 1/2021 BY JPT/GBLA DRAWING PATTN. IN QUANTITY/REVISED/QUANTITY/OVERALL USE EXCEPT

EXHIBIT K

PREPARED BY:
CEMCON, Ltd.
 Consulting Engineers, Land Surveyors & Planners
 2280 White Oak Circle, Suite 100
 Aurora, Illinois 60502-9675
 PH: 630.862.2100 FAX: 630.862.2199
 E-MAIL: ccm@cemcon.com Website: www.cemcon.com

DISC NO.: 904117 FILE NAME: OVERALL SITE EXH
 DRAWN BY: JGC / JGC / PG. NO.: ---
 COMPLETION DATE: 04-29-21 JOB NO.: 904.117
 PROJECT MANAGER : RWB
 REV. 01: 05-24-21/JGC - REVISED PER CITY OF NAPERVILLE COMMENTS
 REV. 07: 06-04-21/JGC - REVISED PER CITY OF NAPERVILLE REVIEW
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June 2, 2021

Ying Liu
Project Manager, TED Business Group
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

Re: Iron Gate Motor Condos Phase 2A and Phase 2B Development

Dear Ying,

Please note that the Naperville Park District is in the process of formulating an agreement that pertains to land cash payments due for residential units to be located on the Phase 2B property pursuant to Section 7-3-5:12.12.7 of the Naperville Municipal Code with the developer of the Iron Gate Motor Condos project. Moreover, the Park District concurs with the proposed language included in Section 5 of the Owner's Acknowledgement and Acceptance Agreement for Iron Gate Motor Condos Phase 2A and Phase 2B attached to this letter as Exhibit A.

Feel free to contact me if there are any questions.

Sincerely,

Eric Shutes
Director of Planning
Naperville Park District

cc: Ray McGury, Naperville Park District, Executive Director
Derke Price, Naperville Park District, Attorney
Allison Laff, Deputy Director – Planning & Development-TED Business Group
Pat Lord, City of Naperville, Attorney

EXHIBIT A

PARK DISTRICT LAND-CASH DONATION EXCERPT OF THE OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT FOR IRON GATE MOTOR CONDOS PHASE 2A AND PHASE 2B

5. **Park Donation.** OWNER AND DEVELOPER agrees to abide by the park donation provisions set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of) of the Naperville Municipal Code, as amended from time to time.

As confirmed by the letter dated June 2, 2021 from the Naperville Park District attached hereto as **Exhibit B**, OWNER AND DEVELOPER and the Naperville Park District are in the process of finalizing an agreement relative to land-cash payments due for residential units to be located on the PHASE 2B Property pursuant to Section 7-3-5:12.12.7 of the Naperville Municipal Code. Said agreement (the "**Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B**") shall be subject to approval by the City which approval right is delegated to the City Attorney. Payment of the agreed upon cash donation shall be made prior to issuance by the City of a building permit for each dwelling unit and shall not be paid under protest, or otherwise objected to.

The Final PUD Plat shall not be recorded until the Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B has been finalized, fully executed, and attached to this Agreement as **Exhibit C**.

The Final PUD Plat shall include a note referencing the existence of the Park District Land-Cash Agreement for Iron Gate Motor Condos Phase 2B.

Potential uses for the Wilmette live/work units – Iron Gate Motor
Condos Phase IIB:

1. Business consultation
2. Crafts or artisans shop
3. Dwelling units
4. Dry Cleaning establishment (satellite site for drop off and pick up only)
5. Financial Planning and Accounting
6. Fitness/Personal Training
7. Health spas such as physical therapy, massage therapy (no lodging)
8. Learning Center/Tutoring
9. Legal Counseling
10. Offices—Business or professional
11. Offices of salesmen, sales representatives or manufacturers' representatives;
provided, that no retail transactions shall be made on the premises except
through telephone, telegraph or mail communication, or electronic or wireless
communication
12. Photography Studio
13. Sleep Clinic
14. Tailoring/Shoe Repair
15. Therapy/Counseling
16. Other uses which are of the same general character as the above permitted
uses, as determined by the Zoning Administrator