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**PROPERTY ADDRESS:
9S364 NAPER BOULEVARD
NAPERVILLE, IL 60565**

**P.I.N.
08-32-105-001
08-32-117-029**

**RETURN TO:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540**

ANNEXATION AGREEMENT
FOR AUBURN MANOR (9S364 NAPER BLVD)

THIS ANNEXATION AGREEMENT (“Agreement”) is entered into between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government under the statutes and Constitution of the State of Illinois, with offices at 400 South Eagle Street, Naperville, Illinois 60540, (hereinafter referred to as the “CITY”) and DRH Cambridge Homes, Inc. with offices at 750 S. Bunker Court, Suite 500, Vernon Hills, IL 60061 (hereinafter referred to as the “OWNER AND DEVELOPER”).

RECITALS

WHEREAS, the OWNER AND DEVELOPER is the owner of record of all of the real property described in **EXHIBIT A1**, attached hereto and incorporated herein by reference, which property is contiguous to the CITY and not within the corporate limits of any municipality (hereinafter referred to as the “SUBJECT PROPERTY”); and

WHEREAS, the OWNER AND DEVELOPER has signed and filed a Petition for Annexation and Zoning with the Naperville City Clerk, for all of the territory described in **EXHIBIT A1**, which territory is situated in the unincorporated area of the County of DuPage County, Illinois, and is presently contiguous to the CITY; and

WHEREAS, all notices, publications, public hearings and all other matters attendant to such Petition for Annexation and Zoning, have been given, held or performed as required by statute or the CITY'S ordinances, regulations, and procedures; and

WHEREAS, the CITY'S corporate authorities have considered the annexation of the SUBJECT PROPERTY and have determined the Petition for Annexation and Zoning to be in order; and

WHEREAS, the OWNER AND DEVELOPER is also the owner of record of the real property described in **EXHIBIT A2**, which property is comprised of approximately 5850 square feet and is located immediately adjacent to and south of the SUBJECT PROPERTY; and

WHEREAS, this Agreement encompasses rights and obligations which attach both to the SUBJECT PROPERTY described on **EXHIBIT A1** and to the property legally described on **Exhibit A2**, which properties shall hereinafter cumulatively be referenced as "SUBJECT PROPERTIES"; and

WHEREAS, the OWNER AND DEVELOPER proposes that the SUBJECT PROPERTIES be developed pursuant to the zoning classification(s) specified in the CITY'S Zoning Ordinance, and the terms and conditions set forth herein; and

WHEREAS, in addition to the matters specified above, the parties hereto have considered all other matters and hereby agree that the development of the SUBJECT PROPERTIES for the uses permitted in the R3A - Medium Density Multifamily Residence District of the CITY'S Zoning Ordinance and in accordance with the terms and conditions of this Agreement will inure to the benefit and improvement of the CITY and its residents, will promote the CITY'S sound planning and development, and will otherwise enhance and promote the general welfare of the CITY'S residents; and

WHEREAS, the CITY and the OWNER AND DEVELOPER has determined that the development of the SUBJECT PROPERTIES should proceed as conveniently as possible and be subject to the ordinances, codes and regulations of the CITY, now in force and effect and as amended from time to time, unless specifically amended as part of the special terms and conditions contained in this Agreement.

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

GENERAL CONDITIONS FOR
THE ANNEXATION OF THE SUBJECT PROPERTY

G1.0 RECITALS.

G1.1 The above-stated Recitals are a material part of this Agreement and are hereby incorporated in this Subsection G1.1 by reference.

G2.0 ANNEXATION AND ZONING.

G2.1 Within sixty (60) days after the execution of this Agreement, or within thirty (30) days of the payment of all applicable fees and submittal of all documents necessary for recording of this Agreement, whichever is later, the CITY shall enact and adopt ordinances for the annexation and zoning of the SUBJECT PROPERTY in accordance with Section S1.0 of this Agreement.

G2.2 In the event all fees are not paid or all documents are not received by the CITY from OWNER AND DEVELOPER within one (1) year of the passage of an ordinance approving this Agreement, this Agreement shall be null and void and all rights and obligations hereunder shall then terminate.

G2.3 Notwithstanding the area, lot, yard, and height standards contained in the Naperville Zoning Code for the zoning classification granted pursuant to this Agreement, after the fifth (5th) year after this Agreement is approved, if the SUBJECT PROPERTIES are developed with any residential uses, the SUBJECT PROPERTIES may only be developed with uses which comply with the density limitations specified in the then-current zoning classification applicable to the SUBJECT PROPERTIES.

G3.0 ANNEXATION FEES.

G3.1 The OWNER AND DEVELOPER has paid all applicable annexation fees specified in Section S2.0 in accordance with Section 1-9E-1 of the Naperville Municipal Code.

G4.0 PARK DISTRICT ANNEXATION.

G4.1 The OWNER AND DEVELOPER has filed concurrently herewith a petition executed by OWNER AND DEVELOPER to annex the SUBJECT PROPERTY to the Naperville Park District. Said petition is conditional and not effective until annexation of the SUBJECT PROPERTY to the City of Naperville.

G5.0 TRANSPORTATION IMPACT FEES – INTENTIONALLY OMITTED.

G6.0 SIDEWALKS AND OTHER TRANSPORTATION RELATED PUBLIC IMPROVEMENTS.

G6.1 The OWNER AND DEVELOPER shall, at its sole cost and expense, construct and install, or pay the cost of the installation of sidewalks along the entire frontage of collector and arterial rights-of-way adjacent to the SUBJECT PROPERTIES in accordance with the City of Naperville Municipal Code, as amended from time to time.

G6.2 At the time of Final Plat approval for those portions of the SUBJECT PROPERTIES adjacent to the collector and/or arterial rights-of-way the OWNER AND DEVELOPER shall, at the sole discretion of the CITY,

1. construct sidewalks along said roadway or
2. pay to the CITY the estimated costs of the construction of the sidewalks along said roadways.

Upon payment, OWNER AND DEVELOPER shall have no further obligation to construct said sidewalk.

G7.0 UTILITY LINES AND EASEMENTS.

G7.1 The OWNER AND DEVELOPER shall grant to the CITY, at no cost to the CITY, any easements within the SUBJECT PROPERTY which the CITY may determine are necessary for the purposes of constructing, installing, replacing and maintaining sanitary sewers, water mains, electric service facilities, and other utilities necessary or incidental to service the SUBJECT PROPERTY.

G7.2 The CITY shall allow the OWNER AND DEVELOPER to use appropriate easements obtained by the CITY from other parties for the purpose of providing sanitary sewers, water mains and other utilities to service the SUBJECT PROPERTIES.

G8.0 WATER SUPPLY AND DISTRIBUTION SYSTEM AND SANITARY SEWER COLLECTION SYSTEM.

G8.1 The OWNER AND DEVELOPER shall be solely responsible for the cost and expense incurred to extend the CITY'S water distribution system and sanitary sewer collection system to the SUBJECT PROPERTIES. Payment shall be due at the time a building permit is issued if the CITY constructs and installs the proposed extension or any portion thereof.

G8.2 Intentionally omitted.

G8.3 The CITY shall permit the connection of the structures reasonably contemplated to be built on the SUBJECT PROPERTIES to the CITY'S water supply and distribution system and sanitary sewer collection system, and shall supply water and collection facilities thereto to the same extent as may be supplied to other structures and areas within the CITY.

G8.4 The OWNER AND DEVELOPER shall be responsible for the cost of all water lines and sanitary sewer lines and related appurtenances located on the SUBJECT PROPERTIES.

G8.5 The OWNER AND DEVELOPER shall also be responsible to pay for all infrastructure availability charges, connection fees and user fees for the CITY'S water distribution system and sanitary sewer collection system as set forth in the CITY'S ordinances, rules, and regulations.

G9.0 WASTEWATER TREATMENT PLANT CAPACITY.

G9.1 The CITY guarantees that at the time building permits are requested, sufficient wastewater treatment plant capacity shall exist to provide complete and adequate wastewater treatment services for the SUBJECT PROPERTIES without payment of any fees other than those specified in Subsection G9.2 of this Agreement.

G9.2 The OWNER AND DEVELOPER shall pay all applicable wastewater infrastructure availability charges, connection fees and customary wastewater user fees in accordance with Title 8 of the Naperville Municipal Code, as amended and any rules and regulations promulgated pursuant to Title 8.

G10.0 UTILITY OVERSIZING.

G10.1 The OWNER AND DEVELOPER shall construct and install at its sole cost and expense all water and sanitary sewer lines shown on the approved final engineering plans submitted for development of the SUBJECT PROPERTIES.

G10.2 The CITY shall pay for oversized water or sanitary sewer lines constructed as required by the CITY in accordance with the provisions of this Section to provide for increased capacity, not merely to compensate for slope differential.

G10.3 Upon installation and acceptance by the CITY of said oversized lines, for residential lines, the CITY shall reimburse the OWNER AND DEVELOPER for the difference between the cost to construct an eight (8") inch line and the cost to construct the oversized line.

For non-residential lines, the CITY shall reimburse the OWNER AND DEVELOPER for the difference between the cost to construct a twelve (12”) inch line and the cost to construct the oversized line.

G10.4 All such oversized lines shall be constructed and installed in strict accordance with the provisions of Section 7-3-6 of the Naperville Municipal Code (Cost Sharing Policy), as amended.

G11.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.

G11.1 OWNER AND DEVELOPER shall pay any and all existing Utility Rebates, Special Connection Fees, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified in Section S3.0.

G11.2 OWNER AND DEVELOPER shall further pay any and all future Utility Rebates, Special Connection Fees, Special Assessments, Recapture Fees, or Special Service Area Taxes, which may be properly and legally approved, established, or levied in the future. Notwithstanding the foregoing, this provision does not abrogate the right of any property owner to contest any Special Assessment or Special Service Area Tax.

G11.3 The sum of the monies to be paid pursuant to 70 ILCS 705/20(e)(1)-(5) as a result of disconnection of the SUBJECT PROPERTY from a fire protection district shall be the sole responsibility of the OWNER AND DEVELOPER which responsibility shall be deemed fulfilled upon payment of said sum to the CITY. Payment in full shall be paid prior to recordation of the ordinance approving annexation of the Subject Property to the CITY and prior to recordation of this Agreement. Failure or oversight to collect said sum shall not release the OWNER AND DEVELOPER from liability therefore. This provision shall survive the expiration or termination of this Agreement.

G12.0 ELECTRICAL UTILITY SERVICE.

G12.1 The CITY shall connect the structures reasonably contemplated to be built on the SUBJECT PROPERTIES to the CITY’S electrical utility system, and shall supply electrical service to those structures to the same extent service is provided on a regular basis to CITY’S other electric customers.

G12.2 The OWNER AND DEVELOPER shall accept all electrical power and energy required for the SUBJECT PROPERTIES from the CITY'S electrical utility system at the time such service is available.

G12.3 The OWNER AND DEVELOPER shall pay all applicable connection fees, and costs related to on-site electrical distribution facilities and customary user fees in accordance with Title 8 of the Naperville Municipal Code.

G13.0 REFUSE AND WEED CONTROL.

G13.1 During all phases of construction, OWNER AND DEVELOPER shall provide a sufficient number of construction-sized dumpsters to contain all trash and debris generated throughout the entire area of the project.

G13.2 OWNER AND DEVELOPER shall prevent such containers from overflowing and shall prevent debris from blowing from the site by having the containers emptied as soon as reasonably possible once they are filled.

G13.3 During all phases of construction, OWNER AND DEVELOPER shall regularly cut all weeds and grass in excess of eight (8") inches high on the site and on the right-of-way adjacent to the site.

G14.0 CHANGES TO ORDINANCES AND REGULATIONS.

G14.1 If during the first five (5) years of the term of this Agreement, the provisions of the existing Naperville Zoning Code as it relates to the SUBJECT PROPERTY are amended to impose more stringent requirements in the subdivision, development, or construction on the SUBJECT PROPERTIES, then such more stringent requirements shall not be effective as applied to the SUBJECT PROPERTIES unless such change is agreed to by the parties hereto. This provision shall not apply to amendments to the Naperville Municipal Code related to conditional uses other than those conditional uses already approved by the Naperville Plan Commission for the SUBJECT PROPERTIES.

G14.2 Except as provided in Subsections G14.2.1 and G14.2.2 and G14.2.3 of this Section, if, during the first two (2) years of the term of this Agreement, the provisions of then-current CITY ordinances or regulations are amended or modified to impose more stringent requirements for the subdivision, or construction of the site development improvements for the SUBJECT PROPERTIES, which improvements are specified in the submitted and approved Final Engineering Plans, such amendments or modifications shall not be effective as applied to the

SUBJECT PROPERTIES, unless such amendments are agreed to by the parties *or* such amendments are adopted to protect the health or safety of the CITY'S residents.

G14.2.1 Any ordinances, standards, or regulations which are the subject of the CITY'S Flood Plain or Stormwater Ordinances for either DuPage or Will County shall be exempt from the provisions of subsection G14.2.

G14.2.2 Any CITY ordinances establishing the payment of subdivision, or development fees, or any taxes, dedication requirements, or reimbursement for costs which may be applicable to the SUBJECT PROPERTIES shall be exempt from the provisions of subsection G14.2.

G14.2.3 Any CITY Building, Fire or Life Safety Codes or ordinances or regulations approved after the passage of an ordinance approving this Agreement shall be exempt from the provisions of G14.

G14.3 If, during the term of this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of any improvements, buildings, appurtenances, or any other development of any kind or character upon the SUBJECT PROPERTIES, other than those upon which site plan approval may be based, are amended or modified to impose less restrictive requirements on development or construction upon properties situated within the CITY'S boundaries, then the benefit of such less restrictive requirements shall inure to the benefit of the OWNER AND DEVELOPER, and anything to the contrary contained herein notwithstanding, the OWNER AND DEVELOPER may proceed with development or construction upon the SUBJECT PROPERTIES pursuant to the less restrictive amendment or modification applicable generally to all properties within the CITY.

G15.0 EXISTING STRUCTURES.

G15.1 At the time this Agreement is fully executed by the parties hereto, where there are any structures on the SUBJECT PROPERTIES:

G15.1.1 A City of Naperville street address shall be assigned to the SUBJECT PROPERTY in accordance with Section 9-2-2 of the Naperville Municipal Code, as amended from time to time within thirty (30) days after this Agreement is fully executed by the parties hereto.

G15.1.2 Any existing structures on the SUBJECT PROPERTIES shall be fully accessible for emergency vehicles, including two (2) points of access, and any special conditions specified in Section S6.0 of this Agreement.

G15.2 At the time this Agreement is fully executed by the parties hereto, any existing structures on the SUBJECT PROPERTIES which fail to conform to the requirements of the CITY'S duly adopted Building and Fire Prevention Codes, as amended from time to time, shall be brought into conformity with such requirements pursuant to any special conditions specified in Section S7.0 of this Agreement.

G16.0 EFFECT OF THIS AGREEMENT.

G16.1 Except as provided in Section G14.0 of this Agreement, if any relevant existing CITY resolution, ordinance, regulations, or interpretation thereof, is inconsistent with or conflicts with any provision of this Agreement, then the provisions of this Agreement shall supersede the terms of said inconsistent resolutions, ordinances, or regulations as they may be applicable to the SUBJECT PROPERTIES.

G17.0 NO DISCONNECTION OR DEANNEXATION.

G17.1 Neither the OWNER nor the DEVELOPER nor any of their successors in interest shall file, cause to be filed, or take any action that would result in the disconnection or deannexation of the SUBJECT PROPERTIES from the CITY during the term of this Agreement.

G18.0 MODIFICATIONS TO THIS AGREEMENT.

G18.1 If the OWNER AND DEVELOPER wishes to modify this Agreement, the CITY shall hold the necessary public hearings.

G18.2 Such hearings shall be held and an approval granted or denial given without unreasonable delay after the request of the OWNER AND DEVELOPER.

G18.3 This Section shall not be construed to require the CITY to modify this Agreement.

G18.4 Any such amendment or modification may be made only as to a portion of the SUBJECT PROPERTIES, or as to the provisions applying exclusively thereto, and may be without the consent of the owners of other portions of the SUBJECT PROPERTIES not affected by the amendment or modification.

G19.0 BINDING EFFECT AND TERM.

G19.1 The parties intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall be recorded against the title of the SUBJECT PROPERTIES and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest, assignees, heirs, executors, or lessees, and upon any successor CITY officials and successor municipalities for a period of ten (10) years from the Effective Date of this Agreement.

G19.2 The zoning classification for the SUBJECT PROPERTIES established by this Agreement shall survive the expiration of this Agreement, unless changed in accordance with applicable law.

G19.3 The OWNER and DEVELOPER shall be jointly and severally liable for all obligations hereunder. Any obligation owed by OWNER AND DEVELOPER for payment or reimbursement of monies provided for herein shall survive the termination or expiration of this Agreement.

G19.4 Any obligations to be performed hereunder by OWNER or DEVELOPER shall survive the termination or expiration of this Agreement.

G19.5 If the SUBJECT PROPERTY is not annexed to the CITY within 365 days after the passage of an ordinance approving this Agreement of this Agreement, this Agreement shall become null and void without any further action by the CITY.

G20.0 CONTINUING RESPONSIBILITY.

G20.1 If the OWNER AND DEVELOPER sells or conveys all or any portion of the SUBJECT PROPERTIES during the term of this Agreement, all of the OWNER AND DEVELOPER'S obligations specified in this Agreement shall devolve upon and be assumed by such purchaser, grantee, or successor in interest, and the OWNER AND DEVELOPER shall be released from such obligations, provided the conditions of subsection G20.2 of this Agreement have been met.

G20.2 No sale or conveyance shall be effective to release the OWNER AND DEVELOPER from the obligations imposed by this Agreement until the purchaser or grantee has posted good and sufficient surety, as determined by the CITY, to secure the performance of all of the OWNER AND DEVELOPER'S obligations contained in this Agreement and as required by CITY ordinance, policy, or regulation.

G21.0 SEVERABILITY.

G21.1 If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

G21.2 The invalidity of any such provision shall not affect any zoning classification for the SUBJECT PROPERTIES that has been approved by the CITY pursuant to the provisions of the CITY'S ordinances and regulations. Any change to such zoning classification shall take place only in accordance with applicable statutes and ordinances.

G22.0 NOTICES.

G22.1 Any notice or demand hereunder from one party to another party or to an assignee or successor in interest of either party or from an assignee or successor in interest of either party to another party, or between assignees or successors in interest of either party shall be in writing and shall be deemed duly served if mailed by prepaid registered or certified mail addressed to the parties specified in Section S4.0 or any individual or entity substituted according to subsection G22.2 of this Agreement.

G22.2 The parties, or any assignee or successor in interest, may substitute names and addresses for notices as appropriate.

G23.0 GOVERNING LAW AND VENUE.

G23.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance, and any legal proceeding of any kind arising from this Agreement shall be filed in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

G24.0 FORCE MAJEURE.

G24.1 Subject to the provisions of G24.2 whenever a period of time is provided for in this Agreement for either the CITY or OWNER AND DEVELOPER to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, strike or lockout by or against either party's own employees or suppliers, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God.

G24.2 Provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. Except as to a strike or lockout by or against either

party's own employees or suppliers, an act or omission shall not be deemed to be “beyond OWNER AND DEVELOPER’S control” if committed, omitted or caused by OWNER AND DEVELOPER, OWNER AND DEVELOPER’S employees, officers or agents or a subsidiary, affiliate or parent of OWNER AND DEVELOPER or by any corporation or other business entity that holds a controlling interest in OWNER AND DEVELOPER, whether held directly or indirectly.

G25.0 ENFORCEABILITY.

G25.1 This Agreement shall be enforceable by any of the parties hereto by any appropriate action at law or in equity to secure the performance of the covenants and terms of this Agreement. In the event that the CITY seeks enforcement of any aspect of this Agreement in a court of competent jurisdiction, and prevails in whole or in part in such action, the OWNER AND DEVELOPER shall reimburse the CITY for its costs and expenses, including but not limited to reasonable attorneys’ fees (in-house or outside counsel) within thirty (30) days of receipt of an invoice therefor.

G26.0 CHALLENGE TO ANNEXATION.

G26.1 If the annexation of the SUBJECT PROPERTY is challenged in any court of legal jurisdiction, the parties to this Agreement agree to cooperate to defend the validity of this annexation. OWNER AND DEVELOPER agrees to hold the CITY harmless and to reimburse the CITY for any and all expenses incurred by the CITY for said defense including reimbursement for any services of outside legal counsel. If the annexation of the SUBJECT PROPERTY is challenged and is held to be invalid: (a) any real estate taxes which have been paid to the CITY shall not be rebated to the OWNER AND DEVELOPER, or its successors and assigns; and (b) the CITY shall enter into a separate written service agreement with the OWNER AND DEVELOPER, or its successor and assigns, so as to provide utility service to the SUBJECT PROPERTY in accordance with the general terms of this Agreement to the extent permitted by law.

G27.0 TIMING OF GRANTS OF PROPERTY INTERESTS.

G27.1 When any dedication of right-of-way, grant of easement, or other dedication or grant of property interests to the CITY is provided for in this Agreement, said dedication or grant shall occur prior to, or simultaneously with, the recording of any final plat of subdivision or issuance of any permit, whichever occurs first.

G27.2 Failure to comply with the timing requirements set forth in this Section shall not relieve the OWNER AND DEVELOPER of the obligations set forth in this Section, and the provisions of this Section shall survive the expiration or termination of this Agreement.

G28.0 NON-WAIVER OF RIGHTS.

G28.1 No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand compliance with the terms hereof.

G29.0 CAPTIONS AND PARAGRAPH HEADINGS.

G29.1 Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

G30.0 ENTIRE AGREEMENT.

G30.1 This Agreement sets forth all the covenants, conditions and promises between the Parties with regard to the subject matter set forth herein and there are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Agreement.

G31.0 AUTHORIZATIONS.

G31.1 The OWNER AND DEVELOPER'S authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the OWNER AND DEVELOPER to execute this Agreement on its behalf. The Mayor and City Clerk warrant that they have been lawfully authorized to execute this Agreement. The OWNER AND DEVELOPER shall deliver to the CITY within ten (10) days of the passage of an ordinance approving this Agreement copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents which evidence their legal authority to execute this Agreement.

G32.0 SURETY.

G32.1 All public improvements required to be done by the OWNER AND DEVELOPER for any phase of the SUBJECT PROPERTY shall be secured by a cash deposit or Letter of Credit in a form approved by the City Attorney, in an amount approved by the City Engineer, and in compliance with the Naperville Municipal Code. This provision shall apply whether or not a Letter of Credit is specified for each improvement. 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.

G33.0 ACCEPTANCE OF PUBLIC IMPROVEMENTS.

G33.1 Subject to approval by the City Engineer, the CITY shall accept public improvements installed by the OWNER AND DEVELOPER on the SUBJECT PROPERTIES, or within the adjacent public right-of-way, pursuant to the process set forth in Section 7-1-7 of the Naperville Municipal Code. Upon CITY acceptance thereof, the OWNER AND DEVELOPER shall post a maintenance Surety in a form and amount approved by the City guaranteeing said improvements against defects in materials or workmanship in the amount of ten percent (10%) of the estimated cost of said improvements to be effective for a period of one year from the date of acceptance.

SPECIAL CONDITIONS FOR THE ANNEXATION OF
SUBJECT PROPERTY

To the extent that there is any inconsistency between the terms or conditions of the following Special Conditions and the General Conditions, the terms and conditions set forth in the Special Conditions of this agreement shall prevail. To the extent that provisions in the Special and General Conditions are not inconsistent, they shall be read together.

S1.0 ANNEXATION AND ZONING.

S1.1 The Zoning Classification for the SUBJECT PROPERTIES determined in accordance with Title 6 of the Naperville Municipal Code shall be R3A (Medium Density Multifamily Residence District).

S1.2 A plat of annexation of the property described on **EXHIBIT A1** attached hereto, prepared by Heager Engineering LLC, dated September 7, 2017, last revised November 15, 2017, which conforms with statutory requirements is attached hereto and incorporated herein by reference as **EXHIBIT B**.

S2.0 ANNEXATION FEES.

S2.1 The Annexation Fee calculated in accordance with Section 1-9E-1 of the Naperville Municipal Code for the SUBJECT PROPERTY is \$500, which has been paid by the OWNER AND DEVELOPER.

S3.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.

S3.1 OWNER AND DEVELOPER shall pay any and all existing CITY Utility Rebates, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified as follows:

Sewer Main Recapture Fee: \$6,024.80 (150.62 feet of the SUBJECT PROPERTY's south frontage at \$40 per lineal foot)

Due: Prior to recordation of this Agreement and the Ordinance Annexing the SUBJECT PROPERTY described on **EXHIBIT A1** attached hereto.

S3.2 Notwithstanding the provisions of Section G11.3 herein, since the SUBJECT PROPERTIES are located within the Naperville Fire Protection District, and prior to annexation was served by the Naperville Fire Department, the OWNER AND DEVELOPER has no obligation to make payment pursuant to 70 ILCS 705/20(e)(1)-(5).

S4.0 ADDRESSES FOR NOTICES REQUIRED BY THIS AGREEMENT.

IF TO THE CITY:

City Clerk, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

WITH COPIES TO:

City Attorney, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

IF TO THE OWNER AND DEVELOPER:

DRH Cambridge Homes, Inc.
750 S. Bunker Court, Suite 500
Vernon Hills, IL 60061

WITH COPIES TO:

Deborah Beaver
DRH Cambridge Homes, Inc.
750 S. Bunker Court, Suite 500
Vernon Hills, IL 60061

and

Steven C. Bauer
Meltzer, Purtil & Stelle LLC
300 South Wacker Drive, Suite 2300
Chicago, IL 60606

S5.0 FIRE CODES AND REGULATIONS.

S5.1 The provisions of Section G14.0 this Agreement notwithstanding, any amendments to the CITY'S Building, Fire, or Life Safety Codes or regulations approved and enacted after the passage of an ordinance approving this Agreement shall be applicable to the SUBJECT PROPERTY without exception.

S5.2 Notwithstanding the provisions of Section G14.2.3 and S5.1, in the event that the CITY'S Building, Fire, or Life Safety Codes or regulations are amended to require a separate fire sprinkler room in each building where individual fire services are planned for proposed building construction on the SUBJECT PROPERTIES, such requirement shall not be applicable to construction of the eight (8) single-family attached dwelling units described in Section S8.2 below so long as construction of all eight (8) units have been completed by December 31, 2019.

S6.0 EMERGENCY ACCESS.

S6.1 OWNER AND DEVELOPER agrees to provide, at OWNER AND DEVELOPER'S cost, one point of access to the SUBJECT PROPERTIES for emergency vehicles. Said emergency access surface shall be in place and approved by the City Engineer prior to commencement of construction on either of the SUBJECT PROPERTIES and may consist of compacted gravel or stone of a twelve-inch thickness until July 30, 2018 after which said access shall be constructed in accordance with approved final engineering and, unless otherwise specified in final engineering, shall consist of a hard surface with binder course and a minimum structural number of 2.36.

S7.0 FINANCIAL SURETY.

S7.1 The OWNER AND DEVELOPER shall comply with the surety provisions set forth in Sections G32.0 and G33.0 hereof except as specifically modified in this Section S7.1. The OWNER AND DEVELOPER agrees to provide and maintain financial surety in a form acceptable to the City Attorney, in an amount which reflects 110% of the cost estimate of all public improvements as approved by the City Engineer, which 110% amount is currently estimated to be \$245,098.70, for completion of public improvements and soil erosion and sedimentation control at the SUBJECT PROPERTIES. Financial surety shall be received and approved prior to issuance of a site development permit for either of the Subject Properties. Such surety shall be a cash deposit or letter of credit in such form and from such entities as shall be approved by the City Attorney and in such amount as approved by the City Engineer. Performance bond(s) and/or other forms of security may be used as surety only with the express agreement of the City Attorney and City Engineer.

S8.0 SCHOOL AND PARK DONATIONS.

S8.1 OWNER AND DEVELOPER shall receive a school and park donation credit for a two-bedroom single-family residence that was previously located on the SUBJECT PROPERTY and was demolished in 2009.

S8.2 In accordance with the Preliminary/Final Plat of Subdivision, attached hereto as **EXHIBIT C**, the SUBJECT PROPERTIES will be subdivided into three (3) lots to allow development of eight (8) single-family attached dwelling units. Accordingly, the OWNER AND DEVELOPER shall pay the required School and Park Donations for eight (8) single-family attached dwelling units as specified as in Sections S8.2.1 and S8.2.2 below:

S8.2.1 **School Donation:** \$5,761.23 (based on eight three-bedroom single-family attached units and a credit for a two-bedroom single-family detached unit), in accordance with the table depicted on **EXHIBIT D**. This required school donation is calculated based on Ordinance 07-188 (Amendment to Naperville Municipal Code Section 7-3-5:3.1: Fair Market Value), as adopted by City Council on August 6, 2007. The OWNER AND DEVELOPER shall meet the required school donation by payment of a cash-in-lieu-of-land donation at a rate of \$720.15 per dwelling unit prior to issuance of each building permit, which process has been approved by the City Council of the City of Naperville. The OWNER AND DEVELOPER acknowledges that the school donation established herein is done so pursuant to City of Naperville ordinance and Code provisions and pursuant to the terms of this Agreement and agree that payment of said amount shall not be paid under protest, or otherwise objected to. OWNER AND DEVELOPER further acknowledges that the school donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds three-bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the school donation table in effect at the time the building permit is issued.

S8.2.2 **Park Donation:** \$43,330.04 (based on eight three-bedroom single-family attached units and a credit for a two-bedroom single-family detached unit), in accordance with the table depicted on **EXHIBIT E**. This required park donation is calculated based on Ordinance 07-188 (Amendment to Naperville Municipal Code Section 7-3-5:3.1: Fair Market Value), as adopted by City Council on August 6, 2007. The OWNER AND DEVELOPER shall meet the required park donation by payment of a cash-

in-lieu-of-land donation at a rate of \$5,416.26 per dwelling unit prior to issuance of each building permit, which process has been approved by the City Council of the City of Naperville. The OWNER AND DEVELOPER acknowledges that the park donation established herein is done so pursuant to City of Naperville ordinance and Code provisions and pursuant to the terms of this Agreement and agree that payment of said amount shall not be paid under protest, or otherwise objected to. OWNER and DEVELOPER further acknowledges that the park donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds three-bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the park donation table in effect at the time the building permit is issued.

S8.3 No other school or, park donations shall be applicable to the SUBJECT PROPERTY except those specifically identified in this Agreement for eight (8) three-bedroom dwelling units unless the use of the SUBJECT PROPERTIES is modified in the future by passage of appropriate City ordinances in which case the land cash donation due shall be calculated based upon Naperville Municipal Code provisions then in effect relative to such use.

S8.4 The provisions in this Section S8.0 shall survive the expiration or termination of this Agreement.

S9.0 SIDEWALKS.

S9.1 Notwithstanding the provisions of Sections G6.0, G6.1 and G6.2, the CITY acknowledges that public sidewalks currently exist along the frontage of the SUBJECT PROPERTY on Ursuline Avenue and Naper Boulevard. Accordingly, the OWNER AND DEVELOPER need not construct and install or pay the cost of installation for sidewalks along those portions of Ursuline Avenue and Naper Boulevard that are adjacent to the SUBJECT PROPERTY. The OWNER AND DEVELOPER agrees to repair and replace any public sidewalk that is damaged or that is not in compliance with the ADA standards prior to issuance of any final occupancy permit on either of the SUBJECT PROPERTIES or within three (3) years after the Effective Date of this Agreement, whichever is sooner. An extension of this timeframe may be granted in writing at the discretion of the City Engineer. The provisions in this Section S9.0 shall survive the expiration or termination of this Agreement.

S10.0 PARK DISTRICT ANNEXATION

S10.1 Notwithstanding the provisions of Section G4.0, the SUBJECT PROPERTY described on **EXHIBIT A1** attached hereto is currently within the boundary of the Naperville Park District; annexation to the Park District is not required.

S11.0 RIGHT-OF-WAY DEDICATION.

S11.1 The OWNER AND DEVELOPER shall dedicate the following rights-of-way adjacent to the SUBJECT PROPERTY on the Preliminary/Final Subdivision Plat for the SUBJECT PROPERTY attached hereto as **EXHIBIT C**, in compliance with the provisions of G27.0 above, at no cost to the CITY, including:

- i. An additional ten feet (10') of the property along the Naper Boulevard frontage of the SUBJECT PROPERTY for a total of fifty feet (50') of right-of-way as measured from the centerline of the roadway; and
- ii. A 30-foot cut corner at the southwest corner of Naper Boulevard and Ursuline Avenue.

The provisions in this Section S11.1 shall survive the expiration or termination of this Agreement.

S12.0 ENGINEERING REVIEW FEE.

S12.1 The Engineering Review Fee calculated in accordance with Section 1-9H-3 of the Naperville Municipal Code for the SUBJECT PROPERTY is \$3,342.26 (1.5% of the cost estimate of all public improvements approved by the City Engineer). The OWNER AND DEVELOPER agrees to pay the Engineering Review Fee in the amount of \$3,342.26 prior to recordation of this Agreement and the Ordinance annexing the SUBJECT PROPERTY described on **EXHIBIT A1** attached hereto.

S13.0 PLANS AND SPECIFICATIONS.

S13.1 OWNER AND DEVELOPER has submitted Final Engineering Plans prepared by Haeger Engineering, LLC, dated September 7, 2017 and last revised January 2, 2018, and Final Landscape Plan prepared by Gary R. Weber Associates, Inc., dated September 5, 2017, and last revised December 8, 2017 ("Plans") for proposed construction on the SUBJECT PROPERTIES. Said Plans have been determined by the City to be in compliance with all current applicable City codes. The OWNER AND DEVELOPER shall be required to submit and have approved applicable site/building permits prior to construction commencing on either of the SUBJECT PROPERTIES. This provision does not negate or modify the provisions set forth in Section G14 of this Agreement.

S14.0 EFFECTIVE DATE.

S14.1 The effective date (“Effective Date”) of this Agreement shall be the date on which this Agreement, and the ordinance approving this Agreement, are recorded with the DuPage County Recorder. If said ordinance and this Agreement are not recorded within twelve (12) months of passage of the ordinance approving this Agreement, this Agreement shall be null and void and all rights and obligations hereunder shall then terminate.

~ SIGNATURES ON FOLLOWING PAGE ~

IN WITNESS WHEREOF, the parties set their hands and seals as of the EFFECTIVE DATE set forth on page 1 hereof.

CITY OF NAPERVILLE

By: _____
Steve Chirico
Mayor

Attest
By: _____
Pam Gallahue, Ph.D.
City Clerk

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by Steve Chirico, Mayor, and Pam Gallahue, Ph.D. City Clerk, this _____ day of _____, 2018.

Notary Public

OWNER

DRH Cambridge Homes, Inc.
750 S. Bunker Court, Suite 500
Vernon Hills, IL 60061

Attest

By: _____

By: _____

[name]

[name]

[title]

[title]

State of Illinois)

)

County of _____)

The foregoing instrument was acknowledged before me by _____,
_____, and _____, this _____
day of _____, 2018.

Notary Public

-seal-

DEVELOPER

DRH Cambridge Homes, Inc.
750 S. Bunker Court, Suite 500
Vernon Hills, IL 60061

By: _____

[name] Omar Rodriguez-Cabrera
[title] Division President

Attest: _____
By: _____

[name] Deborah Beaver
[title] Area Manager

State of Illinois)

County of Cook)

The foregoing instrument was acknowledged before me by Omar Rodriguez,
DP, and Deborah Beaver, Area Manager this
31st day of January, 2018.



K Martin

Notary Public

-seal-

This instrument was prepared by The City of Naperville, 400 S. Eagle Street, Naperville, Illinois, 60540.

**LEGAL DESCRIPTION OF THAT PORTION OF
AUBURN MANOR LAND TO BE ANNEXED TO THE CITY OF NAPERVILLE**

LOT 9 IN LEE WINE'S SECOND ASSESSMENT PLAT OF PART OF THE NORTH HALF OF SECTION 32, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE SAID ASSESSMENT PLAT RECORDED FEBRUARY 10, 1964, AS DOCUMENT R64-4197, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 08-32-105-001

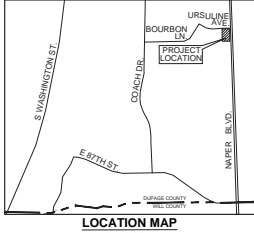
**LEGAL DESCRIPTION OF THAT PORTION OF
AUBURN MANOR LAND ALREADY ANNEXED TO THE CITY OF
NAPERVILLE**

THAT PART OF LOT 95, ORLEANS UNIT 2, BEING A SUBDIVISION IN PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT 95 WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 150.72 FEET OF SAID LOT 95; THENCE SOUTH 00 DEGREES 40 MINUTES 09 SECONDS WEST ALONG SAID NORTHERLY EXTENSION, A DISTANCE OF 60.50 FEET FOR A POINT OF BEGINNING, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID EAST 150.72 FEET; THENCE CONTINUING SOUTH 00 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 39.82 FEET TO THE SOUTH LINE OF SAID LOT 95; THENCE SOUTH 89 DEGREES, 50 MINUTES 57 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 150.72 FEET TO THE SOUTHEAST CORNER OF SAID LOT 95; THENCE NORTH 00 DEGREES 40 MINUTES 09 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 95, A DISTANCE OF 40.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 95; THENCE NORTH 89 DEGREES 54 MINUTES 51 SECONDS WEST ALONG THE NORTH LINE OF SAID EAST 150.72 FEET OF LOT 95, A DISTANCE OF 150.72 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

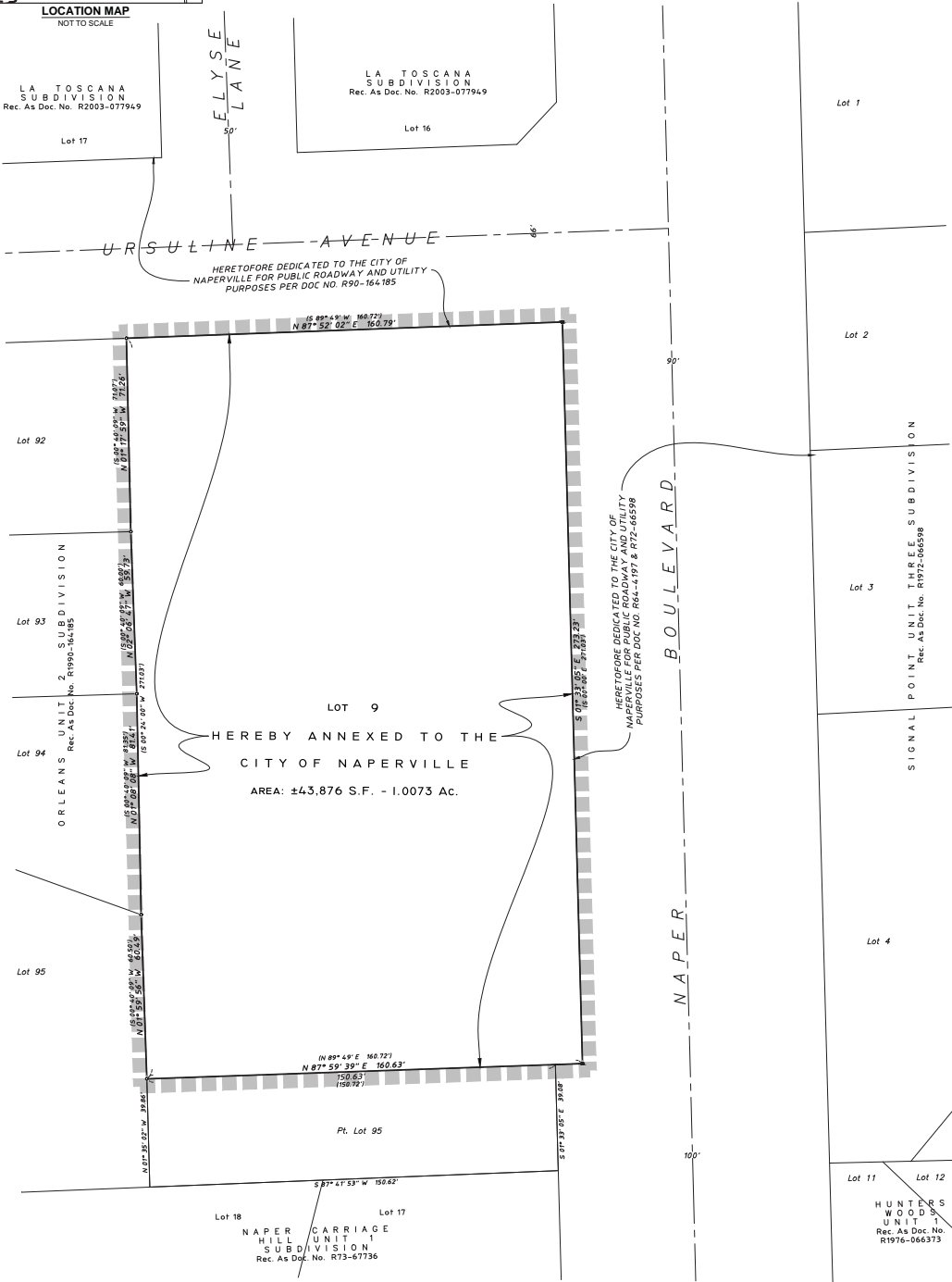
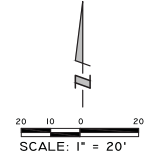
P.I.N.: 08-32-117-029

PLAT OF ANNEXATION TO THE CITY OF NAPERVILLE

THIS PLAT HAS BEEN SUBMITTED FOR RECORDING BY AND RETURN TO:
NAME: NAPERVILLE CITY CLERK
ADDRESS: 400 S. EAGLE STREET
NAPERVILLE, IL 60540



LOT 9 IN LEE WINES SECOND ASSESSMENT PLAT OF PART OF THE NORTH HALF OF SECTION 32, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING H40 TO THE SAID ASSESSMENT PLAT RECORDED FEBRUARY 10, 1964, AS DOCUMENT R64-4197, IN DU PAGE COUNTY, ILLINOIS.



- LEGEND**
- IRON PIPE FOUND
 - IRON PIPE SET
 - SUBDIVISION BOUNDARY LINE
 - ROAD CENTER LINE
 - ROW LINE
 - ▭ SURROUNDING SUBDIVISION LOT NO.
 - ▭ CITY OF NAPERVILLE CORPORATE LIMITS

- ABBREVIATIONS**
- R = RECORD
 - M = MEASURED
 - N = NORTH
 - S = SOUTH
 - E = EAST
 - W = WEST
 - S.F. = SQUARE FEET
 - AC = ACRES
 - NO. = NUMBER
 - DOC. = DOCUMENT
 - C.O.N. = CITY OF NAPERVILLE

HERETOFORE DEDICATED TO THE CITY OF NAPERVILLE FOR PUBLIC ROADWAY AND UTILITY PURPOSES PER DOC. NO. R90-164185

HERETOFORE DEDICATED TO THE CITY OF NAPERVILLE FOR PUBLIC ROADWAY AND UTILITY PURPOSES PER DOC. NO. R64-4197 & R72-465598

HEREBY ANNEXED TO THE CITY OF NAPERVILLE
AREA: ±43,876 S.F. - 1.0073 Ac.

SURVEYOR NOTES

1. BASIS OF BEARINGS: THE BEARINGS SHOWN ON THE PLAT MAP ARE ASSUMED BASED ON NAD 83(2011) ILLINOIS EAST ZONE, N201 STATE PLANE, COORDINATES AS REFERENCED FROM KASA COMPANY'S RIK NETWORK.
2. THERE ARE NO ELECTORS THAT RESIDE ON THE PROPERTY ANNEXED HEREBY.
3. THERE ARE NO HABITABLE STRUCTURES ON THE PROPERTY ANNEXED HEREBY.

DUPAGE COUNTY RECORDER'S CERTIFICATE

STATE OF ILLINOIS)
COUNTY OF DU PAGE)
THIS _____ DAY OF _____, A.D. 20____,
AT _____ O'CLOCK _____ M.

DUPAGE COUNTY CLERK'S CERTIFICATE

STATE OF ILLINOIS)
COUNTY OF DU PAGE)
I, _____ COUNTY CLERK OF DU PAGE COUNTY, ILLINOIS, DO HEREBY CERTIFY THAT THERE ARE NO DELINQUENT GENERAL TAXES, NO UNPAID CURRENT TAXES, NO UNPAID FORECLOSED TAXES, AND NO RECEIVABLE TAX SALES AGAINST ANY OF THE LAND INCLUDED IN THE PLAT.

SURVEYOR'S CERTIFICATE

I, JEFFREY W. GLUNT, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT HAS BEEN PREPARED UNDER MY DIRECT SUPERVISION, FROM SURVEYS AND OFFICIAL RECORDS, FOR THE USE AND PURPOSES HEREIN SET FORTH AND THAT THE PLAT IS A CORRECT REPRESENTATION OF THE HEREIN CAPTIONED PROPERTY.

CITY COUNCIL CERTIFICATE

STATE OF ILLINOIS)
COUNTY OF DU PAGE)
APPROVED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE COUNTY, ILLINOIS,
DATED AT _____, ILLINOIS, THIS _____ DAY OF _____, A.D. 20____,
BY: _____ CITY CLERK

RECORDER OF DEEDS _____ THIS _____ DAY OF _____, A.D. 20____,
COUNTY CLERK _____

SCHAUMBURG, ILLINOIS NOVEMBER 15, 2017
BY: _____ ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3695



EXHIBIT B

HAEGER ENGINEERING
CONSULTING ENGINEERS • LAND SURVEYORS
100 EAST STATE PARKWAY, SCHAUMBURG, IL 60173 TEL: 847.394.6600 FAX: 847.394.6608
ILLINOIS PROFESSIONAL DESIGN FIRM LICENSE NO. 184-003152
EMAIL: HAEGER@HAEGERENGINEERING.COM

PLAT OF ANNEXATION
95364 NAPER BLVD.
NAPERVILLE, IL

NO.	DATE	REVISION
2	11-15-2017	CITY OF NAPERVILLE COMMENTS DATED 11-14-2017
1	10-25-2017	CITY OF NAPERVILLE COMMENTS DATED 10-09-2017

PREPARED FOR/PROPERTY OWNER:
DRH CAMBRIDGE HOMES, INC
750 E. BLUNKER COURT, SUITE 500, VERNON HILLS, IL 60061
TEL: (847) 352-9100 EMAIL: JMEnde@drhorton.com
PROJECT MANAGER: JWG DRAWN BY: NAL
DATE: 09/07/2017 PROJECT NO. 17104
C.O.N. PROJECT NO. 17-10000101 SHEET 1/4

School Donation Worksheet

Name of Subdivision Auburn Manor

School Donation = Land **0.0181** Cash **\$5,761.23**
 = Round (((Total Elementary Pop. x 0.0231) + (Total Jr. High Pop. x 0.0208) + (Total High School Pop x 0.0267)),4)
 = Total Land x \$318,300.00

Type of Unit	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit
Detached						
Single-family						
-1 2-bedroom	0.120	0.411	-0.411	0.138	-0.138	0.222
3-bedroom	0.268	0.486	0.000	0.153	0.000	0.135
4-bedroom	0.371	0.702	0.000	0.259	0.000	0.242
5-bedroom	0.386	0.590	0.000	0.236	0.000	0.242
Attached						
Single-Family						
1-Bedroom	0.206	0.000	0.000	0.057	0.000	0.030
2-Bedroom	0.214	1.712	0.832	0.039	0.312	0.050
8 3-Bedroom	0.183	0.000	0.000	0.106	0.000	0.105
4-Bedroom		0.271	0.000	0.000	0.000	0.000
Apartments						
Efficiency					1.400	0.000
1-Bedroom	0.058	0.000	0.000	0.012	0.000	0.013
2-Bedroom	0.129	0.000	0.000	0.031	0.000	0.038
3-Bedroom	0.199	0.000	0.000	0.073	0.000	0.083
People Produced	1.592	0.421	0.174	0.178	13.872	16.246
					0.773	

