

Created: 5/28/2020  
Last revised: 7/9/2020

**PROPERTY ADDRESS:**  
**831 S. JULIAN ST**  
**NAPERVILLE, IL 60540**

**P.I.N.**  
**08-19-400-010**

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

**ANNEXATION AGREEMENT**  
**FOR 831 S. JULIAN STREET**

THIS ANNEXATION AGREEMENT ("**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, 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 Mathieson House, LLC d/b/a M. House with the address of 710 E. Ogden #250, Naperville, IL 60563 (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 A**, 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 the SUBJECT PROPERTY; 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 propose that the SUBJECT PROPERTY be developed pursuant to the zoning classification(s) specified in the CITY'S Zoning Ordinance, and the terms and conditions set forth and referenced 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 PROPERTY for the uses permitted in the R1A (Low Density Single-Family 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 have determined that the development of the SUBJECT PROPERTY 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 annexing and zoning the SUBJECT PROPERTY in accordance with Section S1.0 of this Agreement.

G2.2 Intentionally omitted.

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 PROPERTY is developed with any residential uses, the SUBJECT PROPERTY may only be developed with uses which comply with the density limitations specified in the then-current zoning classification applicable to the SUBJECT PROPERTY.

**G3.0 ANNEXATION FEES.**

G3.1 The OWNER AND DEVELOPER have 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 have 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 Prior to recordation of a Final Plat of Subdivision for any portion of the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall, at their sole cost and expense, and at the discretion of the City Engineer:

1. construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way, as approved by the City Engineer; or
2. pay to the CITY the estimated cost to construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way. 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 PROPERTY.

**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 PROPERTY. 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 The CITY shall permit the connection of the structures reasonably contemplated to be built on the SUBJECT PROPERTY 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.



G8.3 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 PROPERTY.

G8.4 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 PROPERTY 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 PROPERTY.

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 PROPERTY 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 PROPERTY 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 PROPERTY, then such more stringent requirements shall not be effective as applied to the SUBJECT PROPERTY 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 PROPERTY.

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 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 PROPERTY than were in effect as of the date of approval of this Agreement, 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 PROPERTY, 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 PROPERTY 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 date of approval of this Agreement shall be exempt from the provisions of G14.2

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 PROPERTY, 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 PROPERTY 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 PROPERTY:

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 PROPERTY shall be fully accessible for emergency vehicles, including two (2) points of access, and any "Special Conditions for the Annexation of The SUBJECT PROPERTY" set forth below ("Special Conditions").

G15.2 At the time this Agreement is fully executed by the parties hereto, any existing structures on the SUBJECT PROPERTY 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 set forth below.

**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 PROPERTY.

**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 PROPERTY from the CITY during the term of this Agreement.

**G18.0 MODIFICATIONS TO THIS AGREEMENT.**

G18.1 If the OWNER AND DEVELOPER or the CITY wish 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 is made.

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 PROPERTY, or as to the provisions applying exclusively thereto, and may be without the consent of the owners of other portions of the SUBJECT PROPERTY 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 PROPERTY in the Office of the Recorder in which the SUBJECT PROPERTY is located, and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest,



assignees, heirs, executors, or lessees (whether their interest is in the SUBJECT PROPERTY as a whole or in any portion or aspect thereof), 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 PROPERTY established by this Agreement shall survive the expiration or termination of this Agreement unless changed in accordance with applicable law.

G19.3 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 AND DEVELOPER shall survive the expiration or termination of this Agreement.

#### **G20.0 CONTINUING RESPONSIBILITY.**

G20.1 If the OWNER AND DEVELOPER sells or conveys all or any portion of the SUBJECT PROPERTY 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.

G20.3 Any provision contained in this Agreement which provides for payment or reimbursement of money to the CITY, and/or which provides for the dedication or conveyance of property to the CITY, shall survive the expiration or termination of this Agreement.

#### **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 PROPERTY 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 said 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 but not limited to 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 EFFECTIVE DATE on page 1 of 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 PROPERTY, 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 cash deposit or maintenance letter of credit 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 improvement to be effective for a period of one year from the date of acceptance.

### **G34.0 EXHIBITS INCORPORATED.**

G34.1 All exhibits attached or referenced herein are incorporated herein by reference and made part hereof.

### **G35.0 AMBIGUITY.**

G35.1 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.

### **G36.0 RECAPTURE AGREEMENTS.**

G36.1 If, pursuant to the terms of this Agreement, the OWNER AND DEVELOPER installs improvements, including but not limited to water distribution system improvements, sanitary sewer collection system improvements, storm sewer system improvements, roadway improvements, or other improvements (hereinafter "Improvements") which the OWNER AND DEVELOPER and the CITY reasonably determine will benefit properties other than the SUBJECT PROPERTY, the OWNER AND DEVELOPER may submit a request to the City Engineer for the City to enter into a recapture agreement ("Recapture Agreement"). The OWNER AND DEVELOPER'S request must be accompanied by a draft of the proposed Recapture Agreement and documentation, to the satisfaction of the City Engineer, clearly demonstrating the "as built" costs of the Improvements for which recapture is sought. The proposed Recapture Agreement shall identify the benefitting properties and recapture amounts, which shall be subject to approval of the City Engineer. Subject to approval of the proposed Recapture Agreement by the City Engineer, approval of the form of the Recapture Agreement by the City Attorney, and any notice to be given to the benefitting property owners, the matter shall be scheduled for consideration by the Naperville City Council. If an ordinance approving the

Recapture Agreement is passed by City Council, the Recapture Agreement shall be recorded against the title of the benefiting properties identified in the Recapture Agreement.

G36.1.1 If a proposed Recapture Agreement and supporting documentation are not provided to the City Engineer within twelve (12) months from completion of the Improvements, or such other timeframe as may be agreed to in writing by the City Engineer, the CITY shall no longer have any obligation to enter into a recapture agreement for Improvements hereunder.

**SPECIAL CONDITIONS FOR THE ANNEXATION OF**  
**THE SUBJECT PROPERTY**

To the extent that there is any inconsistency between the terms or conditions of the following Special Conditions and the General Conditions above, 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 PROPERTY determined in accordance with Title 6 of the Naperville Municipal Code shall be R1A (Low Density Single-Family Residence District).

S1.2 A plat of annexation prepared by Roake and Associates, Part of Civil & Environmental Consultants, Inc., dated March 20, 2020, last revised June 3, 2020, which conforms with the 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 \$550, 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 There are currently no utility rebates, special connection fees, recapture fees, special assessments, or special services area taxes applicable to the SUBJECT PROPERTY.

S3.2 Notwithstanding the provisions of Section G11.3 herein, since the SUBJECT PROPERTY is 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:**

Mathieson House, LLC, d/b/a M. House  
710 E. Ogden Ave. #250  
Naperville, Illinois 60563

**WITH COPIES TO:**

Caitlin Paloian  
Rosanova & Whitaker, LTD  
127 Aurora Ave  
Naperville, IL 60540

**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 EFFECTIVE DATE of this Agreement shall be applicable to the SUBJECT PROPERTY without exception.

**S6.0 EMERGENCY ACCESS.**

S6.1 OWNER AND DEVELOPER agrees to construct, at OWNER AND DEVELOPER'S cost, two points of access for emergency vehicles when construction begins; said accesses will be maintained until the roadways are completed. Said emergency access shall consist of a hard surface with binder course and a minimum structural number of 2.36.

**S7.0 EXISTING STRUCTURES.**

S7.1 All existing structures located on the SUBJECT PROPERTY shall be demolished prior to the recordation of this Agreement. OWNER AND DEVELOPER shall provide written notice to the City Attorney and the City's Zoning Administrator within seven (7) days of completion of the demolition. The OWNER and DEVELOPER shall defend, indemnify,

and hold the CITY harmless for any error or omission in recording, or failing to record, this Agreement as provided herein.

**S8.0 SCHOOL AND PARK DONATIONS.**

S8.1 OWNER AND DEVELOPER agrees to abide by the school and park donation provisions set forth in Title 7 of the Naperville Municipal Code as amended from time to time. All school and park donation requirements shall be met by the appropriate land donation or cash-in-lieu payments as are assessed at the time of Preliminary/Final Subdivision Plat approval. OWNER AND DEVELOPER acknowledge that the school and park donation established herein is done so pursuant to City of Naperville Ordinance and Code provisions and agrees that payment of said amount shall not be paid under protest.

S8.2 The OWNER AND DEVELOPER has elected to pay the required school and park donation cash-in-lieu fee as detailed in S8.3 and S8.4 pursuant to the “Estimated Lump Sum Payment” provisions set forth in Section 7-3-5:5.2.1 and Subsection 5:5.2.1.1 of the Naperville Municipal Code, as amended from time to time. The OWNER AND DEVELOPER shall receive a school and park donation credit for one (1) three-bedroom single-family residence that was previously located on the SUBJECT PROPERTY.

S8.3 School Donation: \$12,127.23 (based on two 4-bedroom single-family residences and a credit for one 3-bedroom single-family residence that was previously demolished on the SUBJECT PROPERTY), in accordance with Table A (attached). OWNER and DEVELOPER acknowledges that the required school donation amount (\$12,127.23) is calculated based on Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code.

S8.4 Park Donation: \$11,261.28 (based on two 4-bedroom single-family residences and a credit for one 3-bedroom single-family residence that was previously demolished on the SUBJECT PROPERTY), in accordance with Table B (attached). OWNER and DEVELOPER acknowledges that the required school donation amount (\$11,261.28) is calculated based on Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code.

**S9.0 SIDEWALKS.**

S9.1 The OWNER AND DEVELOPER agrees to install public sidewalk, at the OWNER AND DEVELOPER’S sole cost, across the 236.08 foot of frontage of the SUBJECT



PROPERTY prior to issuance of the final occupancy permit or three (3) years after annexation of the SUBJECT PROPERTY or whichever is sooner. An extension of this timeframe may be granted in writing at the discretion of the City Engineer. This provision 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 is currently within the boundary of the Naperville Park District; annexation to the Park District is not required.

#### **S11.0 ROAD IMPROVEMENT FEE**

S11.1 The OWNER AND DEVELOPER shall pay to the CITY a Road Improvement Fee in the amount of \$76,726.00 (236.08 feet of frontage on Julian Street at \$365 per linear foot), which is the proportionate cost for the roadway improvements to be made adjacent to the SUBJECT PROPERTY on Julian Street. Said sum is due prior to the recordation of the Ordinance annexing the SUBJECT PROPERTY and prior to recordation of this Agreement.

#### **S12.0 EXTENSION OF WATER DISTRIBUTION AND SANITARY SEWER COLLECTION SYSTEMS**

S12.1 Prior to issuance of any occupancy permit for the SUBJECT PROPERTY, the CITY'S water distribution system and sanitary sewer collection system must be extended along Julian Street between Gartner Road and Woodlawn Avenue connecting to the existing water distribution system and sanitary sewer system to be shown on the final engineering plans submitted for the development to be approved by the City Engineer.

S12.2 The CITY plans to reconstruct Julian Street between Gartner Road and Woodlawn Avenue in 2021 (hereinafter "**JULIAN ROADWAY IMPROVEMENTS**"). The JULIAN ROADWAY IMPROVEMENTS include the extension of the water distribution system and sanitary sewer system. If the CITY extends the water distribution system and sanitary sewer system described in S12.1, the City Engineer shall determine the proportionate amount of benefit attributable to the SUBJECT PROPERTY, and the OWNER AND DEVELOPER will pay said share within sixty (60) days of receipt of an invoice therefor. No occupancy permit shall be issued for the SUBJECT PROPERTY until such invoice has been paid in full.

S12.3 Notwithstanding the foregoing, in the event that the JULIAN ROADWAY IMPROVEMENTS are not constructed by the CITY in 2021, then, with the consent of the

OWNER AND DEVELOPER, the City Engineer may approve an alternate plan to fulfill the obligations as set forth S12.1 without requiring approval of an amendment to the annexation agreement.

~ 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**

	Attest
By: _____	By: _____
Steve Chirico	Pam Gallahue, Ph.D.
Mayor	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 \_\_\_\_\_, 20\_\_\_\_.

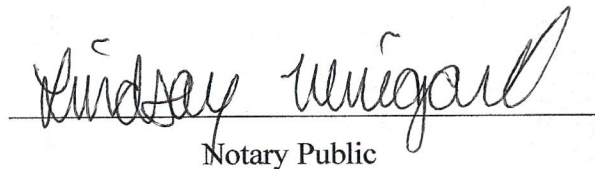
\_\_\_\_\_  
Notary Public

-seal-

***Mathieson House, LLC d/b/a M. House 710 E. Ogden #250, Naperville, IL 60563***

Attest  
By: Elizabeth Mathieson  
[name] Elizabeth Mathieson  
[title] Secretary

The foregoing instrument was acknowledged before me by Scott Mathieson,  
, and Elizabeth Mathieson, this 13  
day of July, 2020.



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



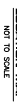
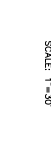
## Legal Description

LOT 6 IN BLOCK 10 IN ARTHUR T. McINTOSH AND COMPANY'S NAPERVILLE ESTATES, BEING A SUBDIVISION IN PART OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 20TH, 1927 AS DOCUMENT 236013 IN DuPAGE COUNTY, ILLINOIS.

Common Address: 831 S. Julian Street, Naperville, IL 60540

PIN: 08-19-400-010

OF PART OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 10 EAST OF  
THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS



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

- LEGEND**
- ANNEXATION BOUNDARY
  - BOUNDARY
  - EXISTING EASEMENT LINE
  - EXISTING LOT LINE
  - CENTER LINE
  - BUILDING SETBACK LINE
  - RIGHT-OF-WAY
  - EXISTING NAPERVILLE CORPORATE LIMITS

**AREA SUMMARY**

GROSS AREA OF ANNEXATION	=	97,920 SQ. FT. (2.248 AC.)	MORE OR
AREA IN RIGHT-OF-WAY	=	15,665 SQ. FT. (0.360 AC.)	MORE OR
NET AREA OF PARCEL	=	82,255 SQ. FT. (1.888 AC.)	MORE OR

THERE ARE NO ELECTORS THAT RESIDE ON THE PROPERTY ANNEXED HEREBY.

THERE ARE NO HABITABLE STRUCTURE ON THE PROPERTY ANNEXED HEREBY.

**SURVEYOR'S CERTIFICATE**

COUNTY OF DRAKE, I, DONALD S. WICKHAM, AN ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE PREPARED THE PLAT FOR FIELD SHEDS AND BUILDING, HEREIN SHOWN, TO BE LOCATED ON THE EAST 1/4 OF SECTION 10, DESCRIBED PROPERTY TO THE CITY OF MARSHFIELD, ILLINOIS AND THE MARSHFIELD PARK DISTRICT.

PLAT 6 IN BLOCK 10 IN WILMARTH, MC MITCHELL AND CO'S MARSHFIELD ESTATES, BEING THE 1/4 OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 10 EAST, COUNTY OF DRAKE, ILLINOIS, RECORDED MAY 20, 1975 AS DOCUMENT 2001.1 IN DRAKE COUNTY.

AND THAT PART OF PLAT SIX BEING RECORDED AS DOCUMENT 2001.1, LINES EAST OF AND ADJACENT TO PLAT 6 IN A.M. & C.O. MARSHFIELD ESTATES.

THE DRAKE CO. HAS BEEN PREPARED BY GEE, INC., UNDER MY PERSONAL DIRECTION FOR THE DRAKE CO. OF THE CLAYTON ROAD PROJECT.

GIVEN UNDER MY HAND AND SEAL THIS \_\_\_\_\_ DAY  
 OF \_\_\_\_\_, A.D., 2020

ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR NO. 2992  
LICENSE VALID THROUGH NOVEMBER 30, 2020

CITY PROJECT NUMBER 20-10000026

831 SOUTH JULIAN STREET - NAPERVILLE, ILLINOIS

REVISIONS					
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION
1	06/03/201	REV. PER CITY R/W DATED 04/13/20			

PREPARED FOR:  
**M-HOUSE DEVELOPMENT**  
710 EAST OGDEN AVENUE, SUITE 200  
NAPERVILLE, ILLINOIS 60563  
PH. (630) 570-0018

**THE ASSOCIATES**  
**of Civil & Environmental Consultants, Inc.**  
1230 E. Diehl Road, Suite 200, Naperville, IL 60563

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# School Donation Worksheet

**Name of Subdivision** 831 S. Julian Street

**Land**

**Cash**

**School Donation = 0.0381**

**\$12,127.23**

= Total Land x \$318,300.00

$$=\text{Round}(((\text{Total Elementary Pop.} \times 0.0231) + (\text{Total Jr. High Pop.} \times 0.0208) + (\text{Total High School Pop} \times 0.0267)),4)$$

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												
2-bedroom	0.120	0.000	0.411	0.000	0.138	0.000	0.222	0.000	1.856	0.000	2.746	0.000
-1	0.268	-0.268	0.486	-0.486	0.153	-0.153	0.135	-0.135	1.913	-1.913	2.955	-2.955
2	0.371	0.742	0.702	1.404	0.259	0.518	0.242	0.484	1.985	3.970	3.532	7.064
5-bedroom	0.386	0.000	0.590	0.000	0.236	0.000	0.242	0.000	2.191	0.000	3.645	0.000
Attached												
Single-Family												
1-Bedroom												
2-Bedroom	0.206	0.000	0.084	0.000	0.057	0.000	0.030	0.000	1.318	0.000	1.697	0.000
3-Bedroom	0.214	0.000	0.104	0.000	0.039	0.000	0.050	0.000	1.966	0.000	2.374	0.000
4-Bedroom	0.183	0.000	0.271	0.000	0.106	0.000	0.105	0.000	2.102	0.000	2.767	0.000
Apartments												
Efficiency												
1-Bedroom	0.058	0.000	0.032	0.000	0.012	0.000	0.013	0.000	1.400	0.000	1.400	0.000
2-Bedroom	0.129	0.000	0.064	0.000	0.031	0.000	0.038	0.000	1.653	0.000	1.710	0.000
3-Bedroom	0.199	0.000	0.115	0.000	0.073	0.000	0.083	0.000	1.744	0.000	2.007	0.000
People Produced	0.474	0.918	0.365	0.349	2.057	4.109						

TABLE A

## Park Donation Work Sheet

Name of Subdivision 831 S. Julian Street

Park Donation = **Land**  
**0.0348**

**Cash**  
**\$11,261.28**

= Land Donation x \$323,600.00

=Round((Total People Produced x 0.0086),4)

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
<b>Detached</b>						
<b>Single-family</b>						
2-bedroom	0.127	0.000	0.327	0.000	0.102	0.000
-1 3-bedroom	0.244	-0.244	0.440	-0.440	0.179	0.000
2 4-bedroom	0.348	0.696	0.522	1.044	0.235	0.470
5-bedroom	0.333	0.000	0.533	0.000	0.262	0.000
<b>Attached</b>						
<b>Single-Family</b>						
1-Bedroom	0.072	0.000	0.091	0.000	0.044	0.000
2-Bedroom	0.157	0.000	0.178	0.000	0.060	0.000
3-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000
4-Bedroom						
<b>Apartments</b>						
Efficiency						
1-Bedroom	0.015	0.000	0.033	0.000	0.013	0.000
2-Bedroom	0.037	0.000	0.063	0.000	0.028	0.000
3-Bedroom	0.037	0.000	0.152	0.000	0.091	0.000
<b>People Produced</b>	<b>0.452</b>	<b>0.604</b>	<b>0.291</b>	<b>0.353</b>	<b>2.340</b>	<b>4.042</b>

TABLE B