

**PURCHASE AGREEMENT  
FOR CITY PROPERTY LOCATED SOUTH OF THE  
SOUTHEAST CORNER OF ILLINOIS ROUTE 59 AND 103<sup>RD</sup> STREET IN THE  
CITY OF NAPERVILLE**

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THIS PURCHASE AGREEMENT FOR CITY PROPERTY LOCATED SOUTH OF THE SOUTHEAST CORNER OF ILLINOIS ROUTE 59 AND 103<sup>RD</sup> STREET IN THE CITY OF NAPERVILLE (“**Agreement**”) by and between the City of Naperville, an Illinois Municipal Corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, with its principal offices at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter “**City**”) and LTF Real Estate Company, Inc., a Minnesota corporation registered to transact business in the State of Illinois with its principal offices located at 2900 Corporate Place, Chanhassen, Minnesota 55317 (hereinafter “**LTF**”). The City and LTF may be referenced herein individually as City, LTF, or “**Party**” and together as “**Parties**”.

**RECITALS**

A. The City owns certain real property located at the southeast corner of Illinois Route 59 and 103<sup>rd</sup> Street in the City of Naperville in DuPage County which property is legally described on **Exhibit A** and depicted on **Exhibit B** (the “**Property**”).

B. Subject to obtaining the necessary Approvals as defined in Section 5.1 hereof and the other terms and conditions herein, LTF desires to purchase approximately 12.55 acres of the Property as legally described on **Exhibit A** and depicted on **Exhibit B** and all improvements, rights, and privileges appurtenant thereto, including without limitation, all development rights, air rights and water rights (collectively, the “**Subject Property**”) for the purpose of constructing a development containing certain improvements, including without limitation, a building, outdoor pool deck, outdoor child care, a portion of shared storm water management facilities, and 525 parking spaces as the development is depicted on the proposed site plan (“**Site Plan**”) attached hereto as **Exhibit C**.

C. The City has determined that continued ownership of the Subject Property is no longer necessary, appropriate, required for the use of, or profitable to retain, and therefore has determined that it is in the best interests of the City to sell the Subject Property for the purposes described herein pursuant to the terms and conditions contained herein, and pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

D. Approximately 4.68 acres of the Property located south of the Subject Property is proposed to be constructed as an affordable housing development for seniors and individuals with developmental disabilities (referenced herein as the “**Affordable Housing Property**” or “**Affordable Housing Development**”).

E. After conveyance of the Subject Property and the Affordable Housing Property, the City will, unless and until all or any part of it is sold, retain ownership of the remainder of the Property (referenced herein as the “**City Outlot**”).

F. The City owns real property (“**City Property**”) to the east of the Property on which a fire station and water tower are located.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and LTF agree that:

**1. RECITALS INCORPORATED BY REFERENCE.**

1.1 The Recitals set forth above are incorporated in this Section 1.1 in their entirety by reference.

**2. PURCHASE PRICE.**

2.1 The purchase price (“**Purchase Price**”) of the Subject Property is Six Million, Five Hundred Sixty Thousand, One Hundred and Thirty Six Dollars (\$6,560,136) which shall be increased on a \$12.00 per SF basis if LTF acquires more than 12.55 acres and decreased on a \$12.00 per SF basis if LTF acquires less than 12.55 acres. The Purchase Price (plus or minus closing prorations) shall be due and payable in cash upon Closing. There is no financing contingency for this Agreement.

2.1.1 The Purchase Price is inclusive of the City’s Work, as defined herein, being completed by the City as provided herein.

**3. EARNEST MONEY.**

3.1 LTF shall deposit One Hundred Thousand Dollars (\$100,000) (the “**Earnest Money**”) in escrow with a title company of LTF’s choosing (hereinafter, the “**Title Company**”) within five (5) business days of full execution of this Agreement.

3.2 LTF shall deposit Additional Earnest Money as defined in Section 5.2 hereof, if applicable, for up to two (2) consecutive extensions of the Approval Period. Said Additional Earnest Money shall be deposited in escrow with the Title Company.

3.2.1 The Earnest Money, and Additional Earnest Money if applicable, shall be applied to the Purchase Price.

3.2.2 Except as set forth in Section 4.6 below, the Earnest Money, and Additional Earnest Money if applicable, shall be refundable until the Approvals defined herein have been obtained to LTF’s sole satisfaction.

3.2.3 The Earnest Money, and Additional Earnest Money if applicable, shall be refunded to LTF in the event of LTF’s termination of this Agreement as provided herein.

3.2.4 LTF and the City shall agree upon Escrow Instructions to the Title Company which instructions shall govern payment and refund of the Earnest Money and any Additional Earnest Money.

#### 4. INSPECTION PERIOD.

4.1 Prior to execution of this Agreement, the City provided LTF with the following documents related to the Subject Property: draft aerial maps depicting the likely location of public utilities on the Property (noting that the City cannot and does not guarantee the exact location of said utilities); tax bills for the Subject Property for the past five (5) years; an initial Phase I Environmental Site Assessment; a final Phase I Environmental Site Assessment; and an ALTA survey of the Property which includes the Subject Property. (collectively the “**Due Diligence Materials**”). An ALTA survey of the Subject Property will be provided by the City by LTF within 120 days of the Effective Date of this Agreement; provided, however, that LTF may elect to have its own ALTA survey of the Subject Property prepared at LTF’s cost, pursuant to Section 22 below.

4.2 Except as set forth in Section 4.1 above, the City does not have any other existing engineering reports or studies, soil test borings, environmental or geotechnical studies, tests or reports, title reports, title policies, recorded or proposed covenants and restrictions, development agreements, proposed declaration covenants and restrictions, protective or restrictive covenants, design guidelines, or feasibility studies of the Subject Property.

4.3 LTF will have a one hundred and twenty (120) day inspection period (the “**Inspection Period**”), beginning when this Agreement is fully executed, to review the Due Diligence Materials. The City will respond to any comments or requests from LTF regarding the Due Diligence Materials within five (5) business days after receipt of such comment or request.

4.4 LTF will have the right to enter onto the Subject Property during the Inspection Period to conduct any inspection and testing of the Subject Property, including without limitation, environmental and geotechnical testing subject to execution of and compliance with an Access and Indemnity Agreement substantially in the form attached hereto and made part hereof as **Exhibit D**.

4.5 LTF shall give the City written notice not later than ten calendar (10) days after expiration of the Inspection Period, but sooner if practicable, if it determines during the Inspection Period that it is not satisfied with the Subject Property for any reason or no reason whatsoever. In such event any Earnest Money being held by the Title Company, as defined herein, shall be refunded to LTF within ten (10) days of receipt of such notice; further, this Agreement will terminate, and LTF and the City shall have no further obligations hereunder.

4.6 Following the Inspection Period, 50% of the Earnest Money shall be non-refundable to LTF (except as otherwise provided herein or in the event of LTF’s termination of this Agreement by reason of City’s default), but applicable to the Purchase Price at Closing.

#### 5. APPROVAL PERIOD.

5.1 Upon expiration of the Inspection Period, or upon LTF giving written notice of waiver of the Inspection Period, LTF will have a hundred and twenty (120) days (the “**Approval Period**”) to obtain approval by its Board of Directors and all entitlements/approvals LTF deems necessary in its sole discretion for LTF’s intended use of the Subject Property or for the construction of improvements on the Subject Property, including, but not limited to, zoning, access, signage, special use permits, variances (including but not limited to variances, if required,

to erect a monument sign at the corner of Illinois Route 59 and 103rd Street and/or entry monuments on each side of two (2) access driveways at the entrance/exit of the Subject Property shown on the proposed Site Plan attached hereto as **Exhibit C**), platting, curb-cuts, building permits, an on-site presale facility and any other necessary approvals from the City of Naperville, other applicable governmental authorities or third parties with approval rights, and any architectural control committee or other private governing authority, if any (collectively, the “**Approvals**”). If LTF is unable to procure any of the Approvals, LTF shall have the option at any time during the Approval Period to terminate this Agreement and receive a refund of 50% of the Earnest Money. The City shall cooperate with LTF in obtaining the Approvals and shall justly consider any necessary variances.

5.2 If LTF is unable to procure the Approvals within the Approval Period, but is diligently seeking the Approvals, LTF shall have the right to extend the Approval Period for two (2) consecutive sixty (60) day periods by, with respect to each such 60-day extension, giving City written notice of such extension and depositing with Escrow Agent additional earnest money (“**Additional Earnest Money**”) in the amount of Twenty-Five Thousand Dollars (\$25,000) for each extension, said notice and deposit to occur prior to or on the last day of the Approval Period or the then-current extension period. Following the Approval Period, or any extension thereof as set forth above, the remaining 50% of the Earnest Money, and any Additional Earnest Money if applicable, shall be non-refundable to LTF (except as otherwise provided herein or in the event of LTF’s termination of the Purchase Agreement by reason of City’s default), but applicable to the Purchase Price at Closing.

## **6. CITY’S WORK.**

6.1 Prior to Closing, the City shall have completed environmental remediation of the Subject Property in accordance with applicable environmental laws as determined necessary and appropriate by the City (hereinafter, “**City’s Work**”).

The City shall diligently prosecute City’s Work to completion at least fourteen (14) calendar days prior to Closing. If, at Closing, any of City’s Work is not completed, LTF may, at its election postpone Closing pending completion of City’s Work; however, such postponement shall not be longer than six (6) months unless consented to in writing by the City. In addition, if City’s Work is not completed within the postponement timeframe, LTF shall have the right to terminate this Agreement by written notice to the City within ten (10) days after the end of the postponement timeframe and all Earnest Money and Additional Earnest Money shall be returned to LTF.

## **7. CITY’S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

The City represents, warrants, and covenants to LTF that, as of the Effective Date and as of the Closing date:

7.1 The Property, including the Subject Property, is the subject of a lease entered into by the City for farming and leaf storage (the “**Drendel Lease**”). The City will terminate the Drendel Lease such that said termination shall take effect prior to the Closing date. There are no other lease or rental agreements encumbering of the Subject Property, or any portion thereof, and the City agrees that it shall not encumber the Subject Property, or any part of it, with any lease, lease renewal, or occupancy/rental agreement that will extend past the Closing.

7.2 The City represents that no part of the Subject Property is the subject of any ordinance or building code violation or pending condemnation action by the City.

7.3 The City represents to LTF that except as set forth or referenced in the Naperville Municipal Code and regulations in effect at the time the Subject Property is developed, including but not limited to the City's Zoning Code and Building Code, and except as specifically referenced herein, the Subject Property is not subject to any existing or contemplated covenants or restrictions providing for use restrictions, design controls, or architectural approvals, or assessments or association dues.

7.4 The City represents that there are no existing structures on the Subject Property (including any pavement, foundations, or concrete pads).

7.5 The City represents that it has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. The execution, delivery and performance by the City of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any governing document, agreement, judicial or administrative order or any law to which the City or any portion of the Subject Property is bound. This Agreement and all documents required hereby to be executed by the City are and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

7.6 There are no judgments presently outstanding and unsatisfied against the City or the Subject Property, nor is there any action, litigation, or investigation proceedings of any kind pending or threatened against the City or the Subject Property which could adversely affect the Subject Property, any portion thereof or title thereto, or which would have a materially adverse effect on the City's power or authority to enter into or perform its obligations under this Agreement. The City shall give LTF prompt written notice if any such judgment, action, litigation, condemnation or proceeding is commenced or threatened prior to the Closing date.

7.7 All of the Due Diligence Materials are true, correct and complete copies of the originals and have been delivered without alteration or omission, noting, however, that as set forth in Section 4.1 hereof, the City cannot and does not guarantee the exact location of public utilities.

7.8 To the knowledge of the City Manager (Douglas A. Krieger) and the Director of the Transportation, Engineering and Development Department of the City (William Novack), there are no underground or above ground storage tanks on the Subject Property, in use or abandoned, and no such tanks have been removed during the City's ownership of the Subject Property except in strict compliance with all laws, ordinances, and regulations regarding such removal.

7.9 Except as set forth in Section 7.9.1 through 7.9.5 below, the City has not made, and will not make or permit to be made or imposed, any commitments or representations to any applicable governmental authorities, or to adjoining or surrounding property owners, which would, in any manner, be binding upon LTF or the Subject Property.

7.9.1 At Closing, LTF will be obligated to reimburse Wheatland Township \$182,725.37 for extension of water utility and sanitary sewer utility on Tower Court.

7.9.2 At Closing, LTF will be obligated to reimburse the City in the amount of \$23,653.26 for extension of water utility and valve installation on Tower Court, and \$14,086.37 for use of the 111<sup>th</sup> Street sanitary lift station.

7.9.3 Prior to Closing, or at such other time as agreed upon by the Parties in conjunction with the developer of the Affordable Housing Property, a stormwater easement and maintenance agreement will be negotiated affecting the Subject Property; the Affordable Housing Property; the City Outlot; and the City Property as further described in Section 16 hereof.

7.9.4 If the Affordable Housing Property is developed prior to development of the Subject Property, LTF may be obligated to reimburse the owner of the Affordable Housing Property for a pro-rata share of the permit fees, expenses (not including the Affordable Housing developer's overhead, in-house consultants, or management expenses) and competitively bid construction costs for utilities extended by the Affordable Housing developer that that will benefit the Subject Property, as reasonably determined by the City Engineer. Said payment shall be made prior to issuance of an occupancy certificate for any structure on the Subject Property.

7.10 Except to the extent set forth in the finalized Phase II Environmental Site Assessment for the Property which will be provided to LTF upon its receipt by the City (the "**Phase II Report**"), preliminary findings of which were shared with representatives of LTF on 2-9-2023, to the knowledge of the City Manager and the Director of the Transportation, Engineering and Development Department of the City: (i) no Hazardous Substances (as defined below) have been disposed of, or identified on, under or at the Subject Property; (ii) the City has not received written notice from any political or quasi-political authority, subdivision, agency, department, court, commission, board, bureau or instrumentality of any of the foregoing asserting jurisdiction over any of the parties hereto or over the Subject Property, that the Subject Property is or may be in violation of any applicable federal, state or municipal law, ordinance or regulation regarding Hazardous Substances; and (iii) any handling, transportation, storage, treatment or usage of Hazardous Substances by the City that has occurred on the Subject Property to date has been in compliance with all Environmental Laws. Based on information in the Phase II Report referenced above, LTF and its successors and assigns are prohibited from using groundwater from the Property as a potable water supply source by drilling of wells or any other method. The Subject Property may, in the future, be subject to an ordinance passed by the City prohibiting the use of groundwater as a potable water supply.

7.10.1 As used herein, the term "**Hazardous Substances**" shall mean those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them. As used herein, the term "**Environmental Laws**" (and individually, "Environmental Law") shall mean each and every applicable federal, state, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement.

7.11 Subject to LTF's payment of all fees, recapture/reimbursement costs and fees (due to the City and/or Wheatland Township and/or to the owner of the Affordable Housing Property, as set forth in Section 7.9 above), and fees and costs set forth in the Naperville Municipal Code, as amended from time to time, (including but not limited to the Facility Installation Charge/"FIC"), and including but not limited to costs associated with installation of necessary equipment and infrastructure (including but not limited to a transformer and associated cable, and service loop), the City represents that the City utilities (electric, water, wastewater) will be adequate to serve the requirements of the Subject Property. LTF will be responsible for all typical development costs and City fees associated with development of the Subject Property, including but not limited to the cost to extend the City electric utility to the Subject Property.

7.12 At Closing, the City shall execute and deliver the Bring Down Certificate (as defined in Section 11.1 (iv) hereof) in a form reasonably approved by LTF and the City Attorney, in favor of LTF certifying that the foregoing representations and warranties are true and correct as of the Closing date (which Bring Down Certificate shall be a condition to LTF's obligation to close, notwithstanding any contrary provision contained herein). The City shall defend, indemnify, and hold harmless LTF for any actual damages or injuries to LTF caused by representations, warranties, or covenants made by the City if such representations, warranties, or covenants were incorrect when they were initially made. Said obligation for the City to defend, indemnify, and hold LTF harmless shall survive for a period of two (2) years after Closing.

## **8. LTF'S DEVELOPMENT AND COVENANT OF PROHIBITED USES ON REMAINDER OF PROPERTY.**

8.1 LTF is purchasing the Subject Property for the intended purposes described in Recital B hereof. This Agreement does not set forth all City-related development costs associated with development of the Subject Property as required by the Naperville Municipal Code, as amended from time to time, or associated with the manner in which LTF determines to develop the Subject Property.

8.2 LTF shall construct sidewalk adjacent to the Subject Property north to 103<sup>rd</sup> Street on the west side of Tower Court as approved by the City Engineer no later than the earlier of: (i) three (3) years after Closing or (ii) prior to issuance of any occupancy permit for the Subject Property, unless a different timeframe is agreed to in writing by the City Engineer.

8.3 The Parties agree that the City Outlot shall be subject to certain restrictions prohibiting the uses identified on **Exhibit E** and allowing only the uses listed on **Exhibit E-1** hereto (noting that if there is any inconsistency between the uses prohibited on Exhibit E and the uses permitted on Exhibit E-1, the prohibitions listed on Exhibit E shall prevail). At Closing, a restrictive covenant ("**Covenant**") in form and content reasonably acceptable to LTF and the City (and to be negotiated during the Inspection Period), reflecting the foregoing provisions, running with the land, in favor of and enforceable by LTF, shall be recorded against the City Outlot with the Office of the DuPage County Recorder.

8.4 The provisions set forth in this Section 8 will survive the Closing and conveyance of the Subject Property to LTF.

**9. CONDITION OF THE SUBJECT PROPERTY**

9.1 The City's Work shall be completed prior to Closing. Except for the express representations and warranties of the City set forth in Section 7, the City is selling the Subject Property "AS-IS" at the time of Closing. This provision will survive the Closing and conveyance of the Subject Property.

**10. STATUTORY COMPLIANCE.**

10.1 The Parties hereto shall provide, and consent to the reporting of, all information regarding this sale required by any act, regulation or statute, including all amendments thereto, of the United States of America, or the State of Illinois, or any agency or subdivision thereof. LTF will provide the City with a disclosure of beneficiaries required by 50 ILCS 105/3.1, pursuant to Section 11.2 below.

10.2 The Parties hereto shall at all times comply with all of the requirements of all county, municipal, state, federal and other applicable governmental statutes or regulations, now in force, or which may hereafter be in force pertaining to the performance of this Agreement.

**11. CLOSING DOCUMENTS.**

11.1 At Closing the City shall convey the Subject Property to LTF by a recordable special warranty deed in ("**Deed**") in a form reasonably agreed to by the City and LTF. The City shall also deliver the following closing documents at or before Closing:

(i) An affidavit, executed by the City and stating its taxpayer identification number for federal income tax purposes and that the City is not a foreign person within the meaning of Section 1445, et. seq. of the Internal Revenue Code.

(ii) Copies of any current permits and licenses issued by the City pertaining to the Subject Property, if any, provided however, that the foregoing will be delivered to LTF outside of escrow.

(iii) A resolution or ordinance of the City authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(iv) A written certificate ("**Bring Down Certificate**") stating that all of the City's representations and warranties contained in Section 7 of this Agreement remain, as of the Closing date, true, correct and complete in all material respects as when first made hereunder.

(v) The City's settlement statement.

(vi) Such disclosures and reports as are required by applicable state and local law in connection with the sale, transfer and conveyance of the Subject Property, if any.

(vii) A seller's affidavit in a form reasonably agreed to by the City and LTF during the Inspection Period.



(viii) IRS Form 1099.

11.2 LTF shall deliver the following Closing documents:

11.2.1 Not less than five (5) calendar days before Closing:

- (i) A copy of a corporate resolution authorizing the transactions set forth in this Agreement.
- (ii) Disclosure of Beneficiaries referenced in Section 10.1 above.

11.2.2 Before or at Closing:

- (i) Any other documents, instruments, records, correspondence or agreements which are reasonably required by the Title Company or otherwise reasonably required to close the escrow and consummate the purchase and sale of the Subject Property in accordance with the terms hereof.

11.3 LTF and the City shall jointly deliver the following Closing documents at Closing:

- (i) The OAA, the Stormwater Agreement, the Right of First Refusal, and the Covenant, fully executed by the City and LTF.
- (ii) The SDA if one has been finalized, fully executed by all parties thereto.
- (iii) An ALTA statement, gap indemnity and any other documents, instruments, records, correspondence or agreements which are reasonably required by the Title Company, as defined herein, or otherwise to close the escrow and consummate the purchase and sale of the Subject Property in accordance with the terms hereof.

## **12. CLOSING DATE AND POSSESSION.**

12.1 When used herein, the term “**Closing**” (or “**Close**”) shall mean the conveyance of the Subject Property by the City to LTF upon payment of the Purchase Price in accord with the terms of this Agreement at a title company (herein “**Title Company**”) selected by LTF.

12.2 City and LTF will close on the purchase/sale of the Subject Property thirty (30) days after expiration of the Approval Period, or any other timeframe mutually agreed upon.

12.3 Possession of the Subject Property shall be granted to LTF at the time of Closing.

12.4 Taxes, if any, due in the year of Closing shall be pro-rated between the City and LTF based upon the date of Closing. The City shall pay all taxes, interest, and penalties on the Property due in the years prior to the year of Closing. The City shall pay all special assessments (including portions otherwise payable in future installments) levied or pending as of Closing, including interest and penalties thereon. The City shall be responsible for any transfer taxes, and any differed (including rollback) taxes required to be paid as a result of the conveyance of the Subject Property to LTF. Any real estate taxes, interest, penalties, or special assessments that

accrue on the Subject Property after Closing shall be LTF's sole responsibility to pay. This provision will survive the Closing and conveyance of the Subject Property.

12.5 Except as otherwise provided below, the Parties shall equally share the costs of Closing.

12.5.1 Each Party shall be responsible for payment of its own attorney's fees and costs associated in any way with the conveyance of the Subject Property, including but not limited to the Closing.

12.5.2 LTF shall pay the cost of the Title Commitment and any update thereto required at Closing. LTF shall pay for extended coverage, if applicable, and any endorsements to Title, for the cost of the owner's policy of title insurance, and for recordation of the Deed, Right of First Refusal, and the Covenant.

### **13. BROKERS' COMMISSIONS.**

13.1 LTF warrants and represents to the City that it has not retained a broker in connection with the purchase and sale of the Subject Property other than LTF's relationship with Meredith Oliver, Daniel Jacobson, Matt Ishakawa, or Mike Smith of CBRE (collectively referenced herein as the "**CBRE Broker**"). LTF shall pay any and all fees and commissions that may be due and payable to CBRE Broker in connection with the transactions contemplated hereby provided that the total broker commissions payable by LTF shall not exceed 6% of the Purchase Price. LTF shall pay the CBRE Broker commissions through the closing escrow. LTF shall defend, indemnify, and hold harmless the City against all claims for brokers' fees and/or similar commissions claimed by any party claiming through LTF, including but not limited to any commissions due to the CBRE Broker (including, but not limited to, any broker commissions which exceed 6% of the Purchase Price).

13.2 The City warrants and represents to LTF that it has not retained a broker in connection with the purchase and sale of the Subject Property. The City shall defend, indemnify, and hold harmless LTF against all claims for brokers' fees and/or similar commissions claimed by any party claiming through the City.

13.3 The provisions set forth in this Section 13 and each subsection hereof will survive the Closing and conveyance of the Subject Property to LTF.

### **14. EASEMENTS.**

14.1 Upon subdivision of the Subject Property, the preliminary and final subdivision plat shall include the following non-exclusive utility easements to the City or private utility and communication companies (as applicable) as follows: (i) a perimeter easement in the southern part of the Subject Property between the stormwater basin and the building to be constructed on the Subject Property which is a minimum of ten feet (10') wide, or wider if space permits, or as otherwise agreed to by the City Engineer; and (ii) a ten foot (10') wide non-exclusive easement over any currently existing public or private utilities and communications facilities in a manner reasonably approved by the City Attorney. Notwithstanding the foregoing, any easements currently existing on the Subject Property may be vacated as appropriate as mutually agreed by the Parties subject to approval and agreement of any third parties having rights therein. Prior to

the issuance of a Certificate of Occupancy for the Subject Property, LTF will grant ten foot (10') wide non-exclusive utility and communication easements to the City or private utility and communication companies (as applicable) for any new utilities installed on the Subject Property to serve the Subject Property.

14.2 During the Inspection Period, and at any other time mutually agreed to by the Parties prior to Closing, the City and LTF agree to reasonably consider and negotiate additional appropriate easements to each other to allow development of the Subject Property and the Property.

14.3 The language of the utility easements to be granted to the City hereunder shall be in substantially the following form:

**PUBLIC UTILITIES AND DRAINAGE EASEMENT PROVISIONS**

**EASEMENTS ARE HEREBY RESERVED FOR AND GRANTED TO THE CITY OF NAPERVILLE, ILLINOIS ("CITY") AND TO THOSE PUBLIC UTILITY COMPANIES OPERATING UNDER FRANCHISE OR CONTRACT WITH THE CITY, OR OTHERWISE AUTHORIZED BY THE CITY, INCLUDING BUT NOT LIMITED TO ILLINOIS BELL TELEPHONE COMPANY DBA AT&T ILLINOIS, NICOR GAS COMPANY, AND THEIR SUCCESSORS AND ASSIGNS, OVER, UPON, UNDER AND THROUGH ALL OF THE AREAS MARKED "PUBLIC UTILITIES AND DRAINAGE EASEMENTS" OR ("PU&DE") ON THE PLAT FOR THE PERPETUAL, RIGHT, PRIVILEGE AND AUTHORITY TO INSTALL, SURVEY, CONSTRUCT, RECONSTRUCT, REPAIR, INSPECT, MAINTAIN, AND OPERATE VARIOUS UTILITY TRANSMISSION AND DISTRIBUTION SYSTEMS, COMMUNITY ANTENNAE TELEVISION SYSTEMS AND INCLUDING STORM AND/OR SANITARY SEWERS, TOGETHER WITH ANY AND ALL NECESSARY MANHOLES, CATCHBASINS, CONNECTIONS, APPLIANCES AND OTHER STRUCTURES AND APPURTENANCES AS MAY BE DEEMED NECESSARY BY SAID CITY, OVER, UPON, UNDER AND THROUGH SAID INDICATED EASEMENTS, TOGETHER WITH THE RIGHT OF ACCESS ACROSS THE PROPERTY FOR NECESSARY PERSONNEL AND EQUIPMENT TO DO ANY OF THE ABOVE WORK.**

**THE RIGHT IS ALSO GRANTED TO TRIM OR REMOVE ANY TREES, SHRUBS OR OTHER PLANTS ON THE EASEMENT THAT INTERFERE WITH THE OPERATION OF THE SEWERS OR OTHER UTILITIES. NO PERMANENT BUILDING SHALL BE PLACED ON SAID EASEMENTS, BUT SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS. WHERE AN EASEMENT IS USED BOTH FOR SEWERS AND OTHER UTILITIES, THE OTHER UTILITY INSTALLATION SHALL BE SUBJECT TO THE ORDINANCES OF THE CITY OF NAPERVILLE.**

**EASEMENTS ARE HEREBY RESERVED AND GRANTED TO THE CITY OF NAPERVILLE AND OTHER GOVERNMENTAL AUTHORITIES HAVING JURISDICTION OF THE LAND OVER THE ENTIRE EASEMENT AREA FOR INGRESS, EGRESS AND THE PERFORMANCE OF MUNICIPAL AND OTHER**

**GOVERNMENTAL SERVICES, INCLUDING BUT NOT LIMITED TO, WATER, STORM AND SANITARY SEWER SERVICE AND MAINTENANCE.**

**THERE IS HEREBY RESERVED FOR AND GRANTED TO THE CITY AN EASEMENT FOR RIGHT OF ACCESS ON, OVER, ALONG AND ACROSS THE PROPERTY DESCRIBED HEREIN FOR THE LIMITED PURPOSE OF READING, EXAMINING, INSPECTING, INSTALLING, OPERATING, MAINTAINING, EXCHANGING, REMOVING, REPAIRING, TESTING, AND/OR REPLACING CITY OWNED UTILITY EQUIPMENT AND METERS WHICH SERVE SAID PROPERTY, INCLUDING NECESSARY PERSONNEL AND EQUIPMENT TO DO ANY OF THE ABOVE WORK.**

14.5 Unless, otherwise agreed by the Parties, all easements granted pursuant to the provisions of this Section 14 shall be granted at no cost to the other Party.

14.6 The provisions in this Section 14 and each subpart hereof will survive the Closing and conveyance of the Subject Property to LTF.

**15. RIGHT OF FIRST REFUSAL.**

15.1 During the Inspection Period, LTF and City shall negotiate the terms of an agreement to be recorded at Closing against the City Outlot, which agreement shall grant LTF a right of first refusal to either lease or purchase the City Outlot (as specified and subject to terms set forth in an offer to lease or purchase from a third party that the City desires to accept) (“**Right of First Refusal**”).

**16. SHARED STORMWATER DETENTION.**

16.1 A stormwater basin (“**Stormwater Basin**”) will be constructed on portions of each of the Subject Property, the Affordable Housing Property, and the City Outlot, which Stormwater Basin will serve the Subject Property, the Affordable Housing Property, the City Outlot, and the City Property (herein referenced as the “**Stormwater Beneficiaries**”). Unless otherwise agreed, construction of the Stormwater Basin will be performed by LTF or the owner of the Affordable Housing Property. The cost to construct the Stormwater Basin will be shared by the Stormwater Beneficiaries pro-rata based on the engineered capacity need of each of the properties as reasonably determined by the City Engineer.

16.2 Each of the Stormwater Beneficiaries shall be responsible for day to day operations and routine maintenance of the portion of the Stormwater Basin located on each respective owner’s property, including but not limited to maintaining vegetation and mowing.

16.3 The installation and cost of expenditures for major improvements and/or repairs to the Stormwater Basin shall be shared by the Stormwater Beneficiaries on a pro rata basis based on the engineered capacity need of each of the properties, with the City taking the lead role in organizing when and how such improvements and/or repairs are to be undertaken and paid for. A stormwater management easement shall be granted to the City on the subdivision plat(s) creating the lots for the Subject Property, the Affordable Housing Property, and the City Outlot. Prior to Closing, the Stormwater Beneficiaries (in conjunction with the proposed developer of the Affordable Housing Property though title to the Affordable Housing Property may not yet have been conveyed by the

City to such developer), will negotiate a separate stormwater easement and maintenance agreement (the “**Stormwater Agreement**”) setting forth provisions related to the Stormwater Basin and the obligations of the Stormwater Beneficiaries, which agreement shall grant the City the right, but not the obligation to access all parts of the Stormwater Basin to perform any necessary work and which shall provide for pro rata payment therefor with the City’s right to lien the properties of any of the Stormwater Beneficiaries who fail to pay their share of the actual and reasonable costs of said improvements or repairs, plus reasonable attorney’s fees and lien recording costs.

**17. BINDING EFFECT.**

17.1 Subject to the requirement that any assignment of this Agreement be approved by the other Party as set forth in Section 28.8 hereof, this Agreement shall be binding upon the Parties hereto, their successors, assigns, transferees, and grantees.

**18. NOTICES.**

18.1 Notices required herein shall be in writing and shall be delivered either personally or by overnight FedEx mail addressed as follows:

FOR THE CITY: City of Naperville Legal Department  
Attention: City Attorney Mike DiSanto  
Naperville Municipal Center  
400 S. Eagle St.  
Naperville, IL 60540

WITH A COPY TO: City Engineer/Director of Transportation,  
Engineering, and Development  
Attention: William Novack  
Naperville Municipal Center  
400 S. Eagle St.  
Naperville, IL 60540

FOR LTF: LTF Real Estate Company, Inc.  
290 Corporate Place  
Chanhassen, MN 55317  
Attn: Kari Broyles  
Email: KBroyles@lt.life  
Fax: 952-946-9794

WITH A COPY TO: LTF Real Estate Company, Inc.  
2900 Corporate Place  
Chanhassen, MN 55317  
Attn: Property Management  
Email: propertymanagement@lt.life  
Fax: 952-947-0797

18.2 Notice served personally or by overnight FedEx mail shall be effective the day following receipt.

**19. AUTHORITY TO EXECUTE.**

19.1 The corporate authorities of the City warrant that they have the authority to enter into this Agreement and that the undersigned has the authority to execute this Agreement on behalf of the City.

19.2 LTF warrants that it has the authority to enter into this Agreement and that the undersigned has the authority to execute this Agreement on behalf of LTF.

**20. EFFECTIVE DATE.**

20.1 The effective date (“**Effective Date**”) of this Agreement shall be the date upon which it is signed by both Parties hereto.

**21. LTF CONTINGENCIES.**

The obligation of LTF to purchase the Subject Property is subject to and contingent upon the satisfaction in LTF’s sole and absolute discretion, as of the dates hereinafter specified, of the following conditions, any of which may be waived in whole or in part by LTF by written notice thereof from LTF to the City (collectively, the “**LTF Contingencies**”):

(i) As of the Closing date, the Title Company shall have issued an owner’s policy of title insurance insuring LTF’s good, marketable and indefeasible title to the Subject Property in the form and with all endorsements required by LTF and in accordance with Section 22.

(ii) As of the Closing date, all of the representations and warranties by the City set forth in this Agreement shall be true and correct and complete in all material respects.

(iii) The City shall have performed all agreements and conditions required by this Agreement to be performed by the City prior to or as of the Closing date and shall have cured all defaults, if any.

(iv) Upon Closing and conveyance of the Subject Property to LTF, all City rights in the Approvals (except any reserved in the Approvals themselves) shall be automatically transferred and assigned to LTF.

(v) As of the Closing date, the Subject Property shall have been platted as an independent and separate lot and shall constitute a single tax parcel.

(vi) As of the Closing date, the Stormwater Agreement (in form and content acceptable to LTF) shall have been executed by all of the Stormwater Beneficiaries and shall be suitable for recording.

The LTF Contingencies are for the sole and exclusive benefit of LTF. If, prior to the Closing date, the LTF Contingencies are not satisfied or waived by LTF, LTF may terminate this Agreement by written notice to the City prior to the Closing date. If such notice shall not have been given on or

prior to the Closing date, then the LTF Contingencies shall be deemed to have been satisfied and the parties shall proceed to Closing as provided in this Agreement. Upon any termination of this Agreement under the provisions of this Section, each party shall be released thereby without further obligation under this Agreement to the other party, except for obligations that expressly survive as specified in this Agreement and all Earnest Money and Additional Earnest Money shall be returned to LTF.

## 22. EXAMINATION OF TITLE.

22.1 Within thirty (30) days of execution of this Agreement: (1) LTF shall order a title commitment from a Title Company of its choice committing the title company to insure title to the Subject Property in the amount determined by LTF, but not less than the full amount of the Purchase Price (the "**Title Commitment**"); and (2) if it elects to do so LTF may order an ALTA/NSPS urban class survey of the Subject Property prepared in accordance with LTF's specifications, and certified to LTF, the City, and the Title Company (the "**Second Survey**").

22.2 Permitted exceptions ("**Permitted Exceptions**") to the Title Commitment shall mean the following, and any other exceptions shown on the Title Commitment or the Second Survey to which LTF does not object, or to which LTF does object and which are not cured by the City as provided in Section 22.3 below:

- (i) General real estate taxes not due and payable at time of Closing
- (ii) City of Naperville zoning laws and ordinances;
- (i) Easements for public utilities as shown on the Second Survey or created pursuant to the terms of this Agreement;
- (ii) Public roads and highways and rights of way pertaining thereto;
- (iii) All special service areas and easements of record;

22.3 LTF shall provide a copy of the Title Commitment and the Second Survey (if any) to the City along with any objections to Title Exceptions listed in the Title Commitment or matters shown on the Second Survey ("**Title Objections**") on or before the expiration of the Inspection Period. The City shall use commercially reasonable efforts to cure any Title Objections within sixty (60) days after the City's receipt of the Title Objections ("**City's Cure Period**"). The City shall in all events be obligated to cause to be released on or before Closing all liens filed against the Subject Property, including but not limited to mechanics liens, mortgages, deeds of trust, or other liens securing a monetary obligation, or to obtain title insurance coverage in favor of LTF therefor. If LTF makes objections to the Title Evidence and if the City fails to cure all items to which LTF objected in LTF's Title Objections prior to the expiration of City's Cure Period, LTF shall have the option, by written notice to the City within ten (10) business days after expiration of City's Cure Period, to either:

- (a) Terminate this Agreement, in which event this Agreement shall terminate and neither Party shall be liable for damages hereunder to the other Party (except for any obligations of either party hereunder that expressly survive such termination), and LTF shall receive a return of all Earnest Money and any Additional Earnest Money; or

(b) Elect to proceed with the transaction as provided herein, in which event LTF shall accept title to the Subject Property subject to the Permitted Exceptions and any uncured Title Evidence.

If LTF does not give the City notice of its election to terminate this Agreement within ten (10) business days after expiration of the City's Cure Period, this Agreement shall remain in full force and effect.

Prior to Closing, LTF may obtain updated Title Evidence and LTF may provide written Title Objections to the City with respect to any matters not previously disclosed on the Title Evidence. The City shall have a 30-day period to cure such new Title Objections, with the Closing being extended as necessary to afford the City the time to cure; provided that LTF shall have the right, at LTF's sole option, to withdraw any such new Title Objections and proceed to Closing. If the new Title Objections are not resolved to the sole satisfaction of LTF on or before the Closing, LTF may give written notice to the City that it terminates this Agreement and the Parties shall have no further obligations hereunder except for those obligations which survive the Closing or termination of this Agreement, and LTF shall receive a return of all Earnest Money and any Additional Earnest Money.

### **23. EXECUTORY PERIOD.**

23.1 From the Effective Date until the Closing date (the "**Executory Period**"), the City shall:

(a) Keep the Subject Property in the same condition as of the Effective Date, ordinary wear and tear excepted except that the City may opt to allow continuation of the Drendel Lease so long as said Lease is terminated prior to Closing.

(b) Advise LTF promptly of any litigation, arbitration or administrative hearing before any governmental agency concerning or affecting the Subject Property that is instituted after the date hereof.

(c) Keep, observe, and perform in a timely manner all of its obligations under any contractual obligations affecting the Subject Property.

(d) Not sell, assign, or convey any right, title, or interest whatsoever in or to the Subject Property, or create or permit to exist any lien, encumbrance, or charge thereon without promptly discharging the same (except for possible continuation of the Drendel Lease until Closing).

(e) Promptly advise LTF in writing of any written notices concerning the Subject Property that the City receives from any appraisal districts, taxing authorities, building officials, zoning officials, or any governmental agency having jurisdiction over the Subject Property.

(f) Maintain in full force and effect any existing insurance.

(g) Not enter into any new service contracts or other agreements affecting the Subject Property except for possible continuation of the Drendel Lease until Closing.



The City shall defend, indemnify, and hold LTF harmless from and against any claim, liability, damage or expense asserted against or suffered by LTF arising from a breach by the City of its obligations under this Section. The City's indemnification obligations under this Section shall survive the Closing.

#### **24. CONDEMNATION.**

24.1 In the event of a taking by condemnation or similar proceedings or actions of all or any part of the Subject Property, LTF shall have the option to terminate this Agreement upon written notice to the City within five (5) business days after notice thereof whereupon all Earnest Money and Additional Earnest Money shall be returned to LTF, and this Agreement shall be null void and the parties shall have no further obligation to each other except for those obligations that are explicitly stated herein to survive termination. If LTF does not exercise its option under the immediately preceding sentence of this Section to terminate this Agreement, then the Agreement shall remain in full force and effect and the City shall assign or pay to LTF at Closing, the City's entire interest in and to any and all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

#### **25. DEFAULT.**

25.1 If the City shall default in the performance of any of its obligations hereunder, then LTF may, by fifteen (15) days' written notice to the City, and provided that City does not cure such default during such fifteen (15) day period, as LTF's sole and exclusive remedy (except as set forth below), in lieu of any other remedies provided by law or equity, elect to terminate this Agreement and receive a reimbursement of all Earnest Money and Additional Earnest Money deposited with the Title Company at such time. Notwithstanding the foregoing provisions of this Section 25(a), if the City's default is caused in whole or in part by the intentional acts or omissions of the City (including but not limited to, the City electing not to close the transaction contemplated herein), then LTF may elect either (i) the termination remedy described above, or (ii) to avail itself of the remedy of specific performance provided that any such action for specific performance is commenced within three (3) months from the City's default.

25.2 If LTF shall default in the performance of any of its obligations hereunder, then the City may, by fifteen (15) days' written notice to LTF, and provided that LTF does not cure such default during such fifteen (15) day period, as the City's sole and exclusive remedy, in lieu of any other remedies provided by law or equity, terminate this Agreement and receive all Earnest Money and Additional Earnest Money deposited with the Title Company at such time. Such amount is agreed upon by and between LTF and the City as liquidated damages, due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof.

#### **26. OWNER'S ACKNOWLEDGMENT AND ACCEPTANCE AGREEMENT ("OAA").**

26.1 Prior to the expiration of the Approval Period, the City and LTF shall negotiate the terms of an Owner's Acknowledgement and Acceptance Agreement ("OAA") applicable to the Subject Property setting forth specific requirements, obligations, and provisions relative to development and use of the Subject Property. The OAA shall be one of the Approvals described

in Section 5.1. The terms of the OAA shall be in addition to any ordinances applicable to the Subject Property; provisions of the Naperville Municipal Code as amended from time to time; and/or other applicable laws, as amended from time to time, to the extent said ordinances, Code provisions and/or other applicable laws are applicable to the Subject Property. Said OAA shall be approved by the City with the ordinance approving subdivision of the Subject Property, and the OAA shall be fully executed and recorded with the DuPage County Recorder prior to conveyance of the Subject Property to LTF.

The Parties hereto agree that the OAA shall provide, that to the extent of any conflict or inconsistency with the provisions of this Agreement (including but not limited to any exhibit attached hereto) and the OAA, the provisions and exhibits of the OAA shall control.

**27. SITE DEVELOPMENT AGREEMENT.**

27.1 Prior to the expiration of the Inspection Period, and contingent upon approval of any needed entitlements, and contingent upon approval of plans and final engineering, the City (or the then-owner of the City Outlot), LTF, and the owner of the Affordable Housing Property (in conjunction with the proposed developer of the Affordable Housing Property though title to the Affordable Housing Property may not yet have been conveyed by the City to such developer), may negotiate a separate site development agreement (the “SDA”) setting forth provisions related to (among other possible things) the construction of the Stormwater Detention Basin, mass grading of the entire Property, construction of utilities, and shared access drives (if any) (the “Site Work”). It is anticipated that the SDA may provide that the reasonable estimated costs of the Site Work shall be deposited in escrow by the party(ies) required to pay for such work, and in the event of a default in the timely performance of the Site Work, the other parties may access the escrowed funds to complete the Site Work.

**28. GENERAL TERMS AND CONDITIONS.**

28.1 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.

28.2 Unless otherwise specified as “business days”, calendar days are intended. Business days as used in this Agreement are defined as Monday through Friday, excluding Federal holidays. If the date for performance shall fall on a Saturday, Sunday or national holiday, the date for performance shall be extended to the next business day.

28.3 The Parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy under any statute or law.

28.4 The legal representatives for the City and LTF may agree in writing (including by email) to revise any timeframe or due date provided for herein.

28.5 This Agreement contains the entire agreement between the Parties. All negotiations between the Parties are merged in this Agreement, and there are no understandings or agreements, verbal or written, other than those incorporated in this Agreement

28.6 This Agreement shall not be altered, amended, changed or modified except in writing executed by the parties hereto.

28.7 Venue for any action taken by either Party, whether in law or in equity, to enforce the terms of this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. This Agreement and the legal relations between the Parties hereto shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the conflicts of laws principles thereof.

28.8 Neither Party may assign or transfer this Agreement unless said assignment or transfer is approved in advance in writing by the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

28.9 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 paragraph, subparagraph, sentence or clause not adjudged to be invalid.

28.10 The representations, covenants, and warranties set forth in Section 7 of this Agreement shall survive the Closing and conveyance of the Subject Property to LTF for a period of two (2) years after Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

28.11 All exhibits attached hereto shall be deemed incorporated herein and made part hereof.

28.12 Notwithstanding Section 18 above, any dates or deadlines under this Agreement may be extended by exchange of electronic mail between the parties or their attorneys.

**THE PARTIES TO THIS AGREEMENT** by their signatures acknowledge they have read and understand this agreement and intend to be bound by its terms.

/SIGNATURES ON FOLLOWING PAGES/

**CITY/CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

State of Illinois                    )  
  )SS  
County of DuPage                )

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager of the City of Naperville and Pam Gallahue, City Clerk for the City of Naperville this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Print Name

-seal-

**LTF REAL ESTATE COMPANY, INC.**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
  )SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Print Name

-seal-

## **AGREEMENT EXHIBITS**

**Exhibit A – Legal Description of Property and Subject Property**

**Exhibit B – Depiction of Property and Subject Property**

**Exhibit C – Proposed Site Plan for Subject Property**

**Exhibit D - Access and Indemnity Agreement (without exhibits)**

**Exhibit E – Prohibited Uses on City Outlot**

**Exhibit E-1 – Allowed Uses on City Outlot**

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY AND SUBJECT PROPERTY

#### **PROPERTY:**

##### **Legal Description**

Lots 4, 5, and 6, in Naperville-South Forty Subdivision, a Subdivision of the Northwest Quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 4, 2007, as Document Number R2007-132356, and re-recorded November 16, 2007, as Document Number R2007-166808, in the City of Naperville, Will County, Illinois.

#### **SUBJECT PROPERTY:**

##### **Legal Description**

An approximately 12.55 acre portion off the following described property (legal description to be finalized prior to expiration of the Inspection Period):

Lots 4, 5, and 6, in Naperville-South Forty Subdivision, a Subdivision of the Northwest Quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 4, 2007, as Document Number R2007-132356, and re-recorded November 16, 2007, as Document Number R2007-166808, in the City of Naperville, Will County, Illinois.

##### **PINs:**

01-15-101-044 [part of]

01-15-101-045

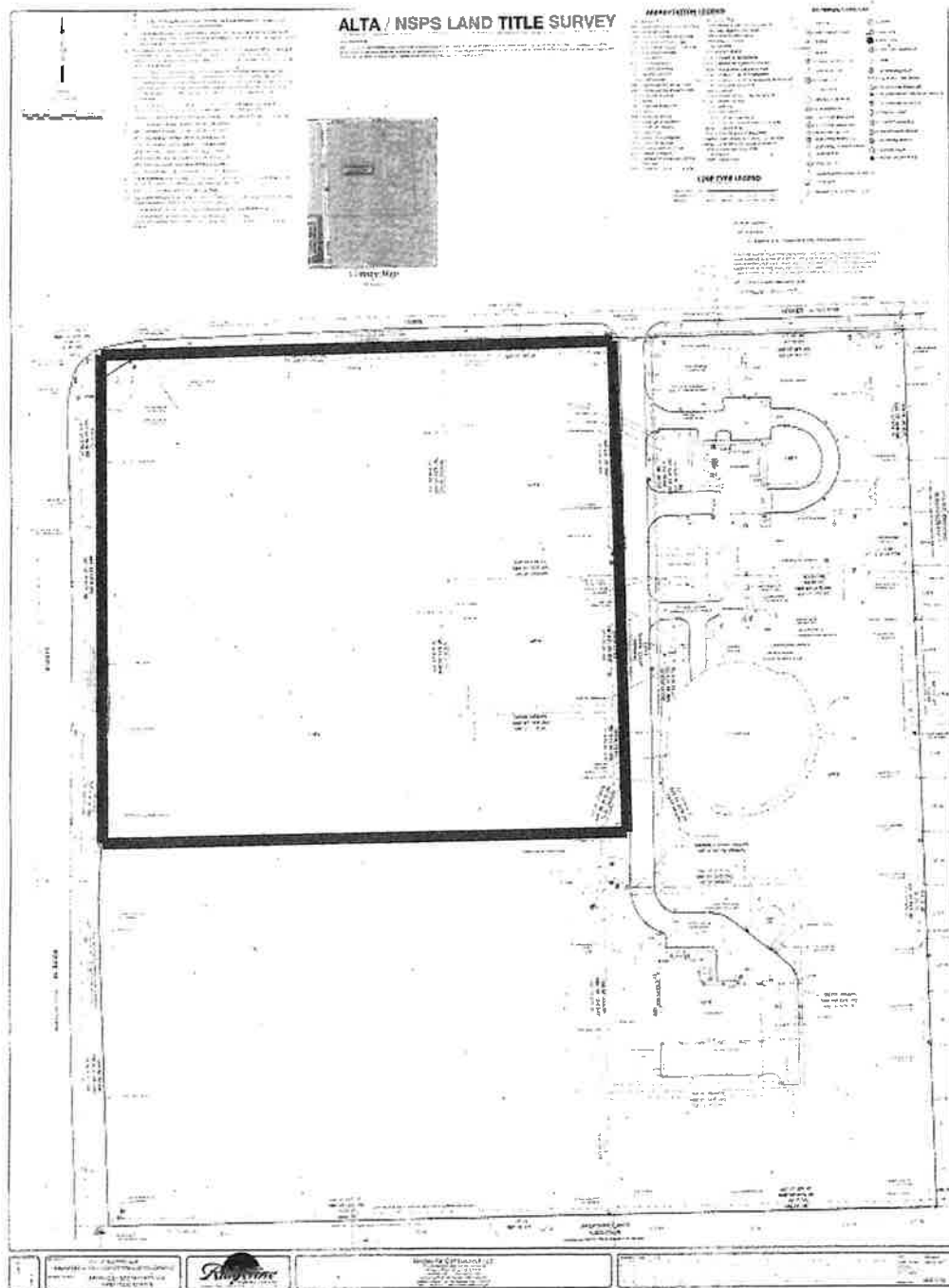
01-15-101-046

##### **Common Address:**

Approximately 12.55 acres of  
vacant land located SE of 103<sup>rd</sup> Street  
and Illinois Route 59 on Tower Court  
Naperville, IL

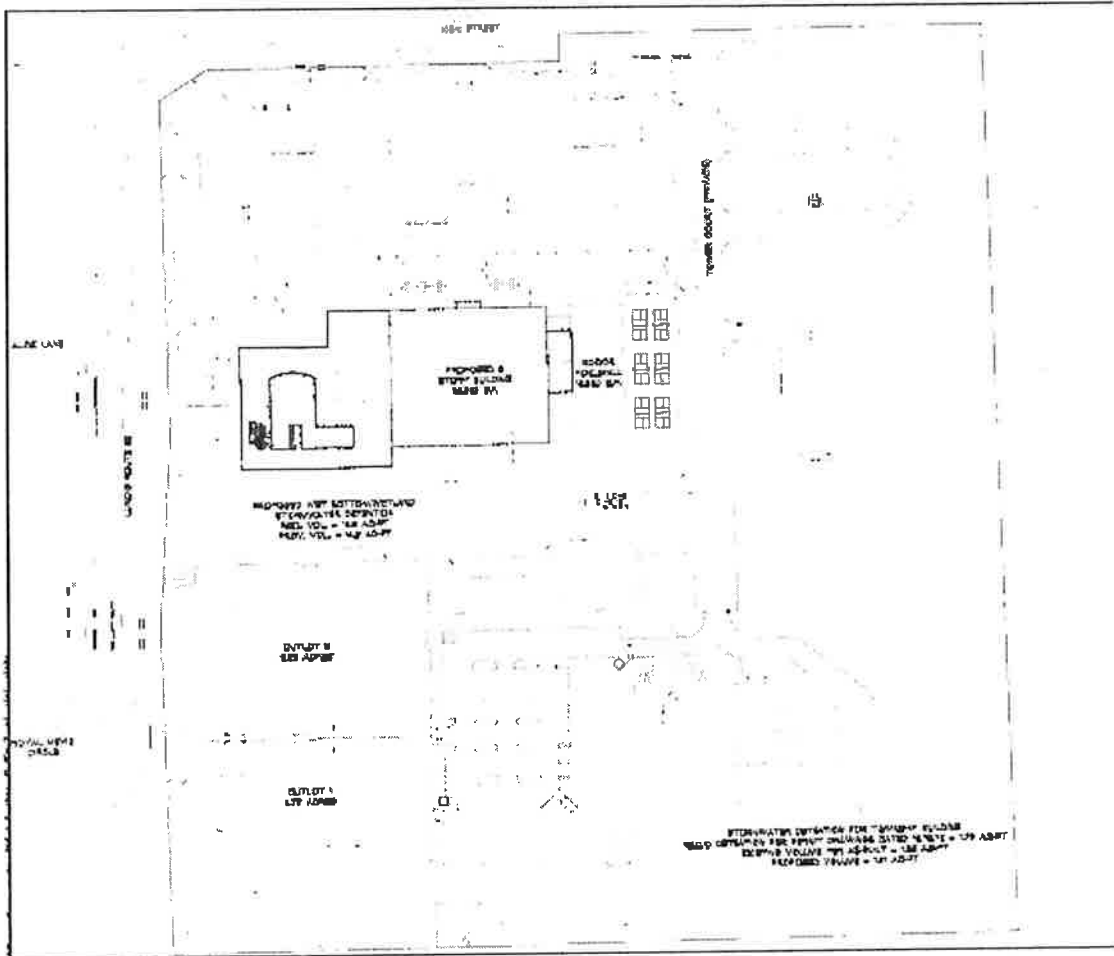
**EXHIBIT B**

**DEPICTION OF PROPERTY AND SUBJECT PROPERTY**





**EXHIBIT C**  
**PROPOSED SITE PLAN FOR SUBJECT PROPERTY**



## EXHIBIT D

[Without Exhibits]

### ACCESS AND INDEMNITY AGREEMENT

This Access and Indemnity Agreement is made and entered into as of \_\_\_\_\_, 202\_\_ by and between the City of Naperville (referenced herein as "City" or "Licensor") and LTF Real Estate Company, Inc. ("Licensee").

#### RECITALS

Licensor owns certain real property legal described on Exhibit A and depicted on Exhibit B attached hereto and made part hereof ("Subject Property").

Licensee desires to have access to the Property for purposes of performing due diligence investigations and testing of the Property (including but not limited to Phase I and Phase II Environmental Site Assessments conducted) and Licensor agrees to permit such access as provided herein.

---

NOW THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

**Access.** Licensor hereby grants Licensee and its employees, agents, consultants, contractors and subcontractors (collectively "Licensee's Representatives") reasonable access to the Property for the purpose of conducting due diligence investigations and testing of the Property, including but not limited to Phase I and Phase II Environmental Site Assessments of the Property.

**Permits.** Licensee shall obtain, at its expense and prior to any access to the Property by Licensee and/or Licensee's Representatives all necessary permits and authorizations of whatever nature from any and all governmental agencies which are required in connection with the investigations and testing. In connection therewith, Licensee will comply and will cause Licensee's Representatives to comply with all applicable federal, state and local laws, regulations, permits, permit conditions, standards, directives, guidelines, and judicial and administrative orders and decrees currently existing and as amended, enacted, issued or adopted in the future.

3. **Results of Testing:** Within five (5) business days of receipt by Licensee, Licensee shall disclose and furnish copies to the City Engineer of the results (including but not limited to all technical data and laboratory reports) of any sampling and analytical tests of any kind performed on the Subject Property. Such materials will be provided to Licensor without any representation or warranty of any kind by Licensee.

4. **Notice:** Licensee shall give advance notice to the City Engineer prior to any entry onto the Property to conduct any work related to the investigations or testing of the Subject Property. Licensor and/or its representatives shall have the right to accompany and

observe Licensee and/or Licensee's Representatives during Licensee's and/or Licensee's Representatives' performance of all such work and activities upon the Subject Property.

5. Minimum Disturbance. Licensee and Licensee's Representatives shall perform all work on the Subject Property permitted hereunder with such reasonable care and diligence as will avoid accident, damage or harm to persons or Subject Property.

6. Condition of the Subject Property. At all times during the term of this Agreement and in connection with Licensee's and/or Licensee's Representatives' access to the Subject Property, Licensee shall, at its own cost and expense, take any necessary action to restore the Subject Property and any improvements and personalty thereon, and all facilities appurtenant thereto, to substantially the same condition immediately prior to the testing, including, without limitation, ensuring that any holes, ditches or other indentations as well as any mounds or other inclines created by any excavation, are substantially regraded and resurfaced to conform to the requirements of this paragraph.

7. Repair. Unless otherwise agreed to in writing by the City Engineer, if any portion of the Subject Property suffers damage by reason of the access of Licensee or Licensee's Representatives to the Subject Property and/or any analysis or testing performed, Licensee shall, at its sole cost and expense immediately repair all such damage or replace any damaged portion of the Subject Property and restore the Subject Property to substantially its condition prior to the occurrence of such damage as reasonably approved by the City Engineer.

8. Assumption of Risk and Waiver. Except to the extent caused by the gross negligence or willful misconduct of Licensor, its employees, agents, contractors, or customers, Licensor shall not be responsible for any loss, damage or injury of any kind to any person or property arising from any access to or use of the Subject Property by Licensee and/or Licensee's Representatives pursuant to this Agreement, or caused by any defect in any building, structure or other improvement on the Subject Property or in any equipment or other facility on the Subject Property and arising from any access to or use of the Subject Property by Licensee and/or Licensee's Representatives pursuant to this Agreement, or caused by or arising from any act or omission of Licensee and/or any of its Representatives, or by or from any accident on the Subject Property or any fire or other casualty thereon and arising from any access to or use of the Subject Property by Licensee and/or Licensee's Representatives pursuant to this Agreement, or occasioned by the failure of Licensor to maintain the Subject Property in safe condition and arising from any access to or use of the Subject Property by Licensee and/or Licensee's Representatives pursuant to this Agreement. Licensee, on behalf of itself and Licensee's Representatives, as a material part of the consideration for this Agreement hereby waives all claims and demands against Licensor and its officers, officials, agents, and employees for any such loss, damage or injury of Licensee and/or Licensee's Representatives arising from any access to or use of the Subject Property by Licensee and/or Licensee's Representatives pursuant to this Agreement, except to the extent caused by the gross negligence or willful misconduct of Licensor, its employees, agents, contractors or customers. The provisions of this paragraph shall survive the termination of this Agreement.

9. Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Licensor or their employees, agents, contractors, or tenants, Licensee agrees to protect, indemnify, defend, and hold harmless Licensor, their officers, officials, agents and employees from and against any and all liabilities, claims, demands, suits, judgments, causes

of action, losses, damages, costs, injuries, or penalties to the extent resulting directly from Licensee's testing, access or use of the Subject Property, pursuant to this Agreement, or in connection with Licensee's and/or Licensee's Representatives' activities on the Subject Property pursuant to this Agreement. No such indemnification or protection shall extend to the current environmental condition of the Subject Property or the mere discovery of a pre-existing condition of the Subject Property. The provisions of this paragraph shall survive the termination of this Agreement.

10. **Insurance.** Licensee shall require any contractor performing any investigation or testing of the Subject Property pursuant to this Agreement to provide Licensor/the City Attorney with a certificate of insurance and additional insured endorsement evidencing insurance coverage under Commercial General Liability, Contractors Pollution Liability, and Errors and Omissions Liability insurance policies from a source and in a form reasonably acceptable to Licensor and naming the City of Naperville and its officers, officials, agents, and employees as additional insureds on the Commercial General Liability and Contractors Pollution Liability policies. Said certificate of insurance and additional insured endorsement shall be received and approved by the City Attorney prior to contractor accessing the Subject Property. If LTF employees perform any investigation or testing of the Subject Property pursuant to this Agreement, LTF shall provide the same insurance, certificate of insurance, and additional insured endorsement as set forth above.

11. **Choice of Law.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

12. **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

14. **Notice.** All notices and demands which any party is required or desires to give to any other shall be given in writing by personal delivery, by express courier service or by certified mail, return receipt requested, to the address set forth below for the respective party. All notices and demands shall be effective only upon receipt by the party to whom notice or a demand is being given.

To Licensor:

Mike DiSanto, City Attorney  
Naperville Municipal Center  
Attn: Legal Department  
400 South Eagle Street  
Naperville, IL 60540

With a copy to:

William Novack, City Engineer  
Naperville Municipal Center  
Attn: Transportation, Engineering, and Development Dept.  
400 South Eagle Street  
Naperville, IL 60540

To Licensee:  
LTF Real Estate Company, Inc.  
2900 Corporate Place  
Chanhassen, MN 55317  
Attn: Kari Broyles  
Email: KBroyles@lt.life  
Fax: 952-946-9794

With a copy to:

LTF Real Estate Company, Inc.  
2900 Corporate Place  
Chanhassen, MN 55317  
Attn: Property Management  
Email: propertymanagement@lt.life  
Fax: 952-947-0797

**15. Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original, but which together shall constitute one and the same instrument.**

**IN WITNESS WHEREOF, the parties hereto have caused this Access and Indemnity Agreement to be executed by their duly authorized representatives as of the day and year first above written.**

**CITY OF NAPERVILLE [LICENSOR]**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_

**LTF REAL ESTATE COMPANY, INC. [LICENSEE]**

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

Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
  ) ss  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me, appeared before me this day in person and acknowledged that they signed this instrument pursuant to authority granted to them by LTF Real Estate Company, Inc.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

(seal)

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

## **EXHIBIT E**

### **PROHIBITED USES ON CITY OUTLOT**

No portion of the City Outlot shall be used for any of the following uses or purposes:

(a) health or fitness club, gym or any commercial facility used for physical exercise or individual or group fitness or athletic training regardless of whether such business charges membership dues, class fees or any other arrangement;

1. Notwithstanding subsection (a) above, a gym or health or fitness-type facility may be built on the City Outlot as part of any residential development, solely as an amenity for the exclusive use of residents and occupants of the residential development only (and overnight guests of the residents and occupants of the residential development).

(b) Yoga studio or facility, except as part of the health or fitness component of the residential development described in (a)1.;

(c) Pilates studio or facility, except as part of the health or fitness component of the residential development described in (a)1.;

(d) Cycle studio or facility (e.g. SoulCycle), except as part of the health or fitness component of the residential development described in (a)1.;

(e) Barre studio or facility, except as part of the health or fitness component of the residential development described in (a)1.;

(f) any specialty fitness studio or facility, except as part of the health or fitness component of the residential development described in (a)1.;

(g) boutique gym, fitness training facility (e.g. Orange Theory), except as part of the health or fitness component of the residential development described in (a)1.;

(h) Any business that offers the same services that LTF provides.

**EXHIBIT E-1**  
**ALLOWED USES ON CITY OUTLOT**

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TITLE 6 - ZONING REGULATIONS CHAPTER  
7 BUSINESS DISTRICTS

**CHAPTER 7 BUSINESS DISTRICTS**

***ARTICLE A. B1 NEIGHBORHOOD CONVENIENCE SHOPPING CENTER DISTRICT***

SECTION:

**6-7A-1: INTENT:**

The neighborhood convenience shopping center district is intended to provide convenience shopping for persons living in adjacent residential areas. Permitted uses shall be those which are necessary to satisfy basic shopping needs which occur daily or frequently and so require facilities in relative proximity to places of residence. These facilities shall be in the form of a shopping center.

(Ord. 80-5, 1-21-1980)

**6-7A-2: PERMITTED USES:**

No building, structure, or parcel of land shall be used and no building or structure shall be erected, altered, or enlarged which is arranged, intended, or designed for other than a shopping center which includes any of the following uses:

1. Bakeries.
2. Banks and financial institutions.
3. Barbershops.
4. Beauty shops/salons.
5. Candy and ice cream stores.
6. Civic buildings.
7. Drugstores.
8. Dwelling units.
9. Dry cleaning establishments and laundries employing not more than ten (10) persons.
10. Eating establishments, including outdoor cafes.
11. Food stores, grocery stores, meat markets and delicatessens.
12. Gift shops.
13. Internet cafes.
14. Health spas without lodging accommodation/massage establishment.
15. Offices—Business or professional.
16. Offices/clinics—Medical or dental.
17. Package liquor stores.



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18. Shoe and clothing repair stores.
  19. Other uses which are of the same general character as the above permitted uses as determined by the Zoning Administrator, but specifically prohibiting those uses which are first permitted in the B2 district or B3 district.
  20. Business machine stores, sales and services.
  21. Office machine stores, sales and services.
  22. Video rentals.
  23. Carryout establishments.
  24. Coffee shops.
  25. Learning centers.
  26. Fitness facility.
  27. Sleep clinics.
  28. Pet grooming and training establishments.

(Ord. No. 90-211, 10-2-1990; Ord. No. 06-225, 9-19-2006; Ord. No. 06-300, 12-19-2006; Ord. No. 10-073, § 1, 6-15-2010; Ord. No. 13-082, § 3, 8-20-2013; Ord. No. 15-190, § 2, 12-1-2015; Ord. No. 16-081, § 2, 6-21-2016)

#### **6-7A-3: CONDITIONAL USES:**

The following conditional uses may be permitted in specific situations in accordance with the procedures outlined in Section 6-3-8 and Chapter 4 of this Title, as appropriate:

1. Drinking establishments.
2. Planned unit developments.
3. Public and private utility facilities.
4. Telecommunications facilities as required by Chapter 13 of this Title.
5. Nursery schools, preschools and daycare centers.
6. Vocational and trade schools operated entirely indoors.
7. Photography studios.

(Ord. No. 92-22, 2-18-1992; Ord. No. 06-264, 11-21-2006; Ord. No. 06-225, 9-19-2006; Ord. No. 08-078, 4-15-2008; Ord. No. 13-082, § 3, 8-20-2013)

#### **6-7A-4: REQUIRED CONDITIONS:**

The following conditions shall be required:

1. Each B1 district shall be developed as a shopping center containing more than one business establishment.
2. Dwelling units shall not be permitted below the second floor of any building or structure. Dwelling units and business uses may be permitted on the same floor, above the ground floor, provided that the public access to the business uses is separated from the entrance to the residential uses.
3. Eating and drinking establishments shall not include entertainment and dancing.

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4. Each store in the shopping center shall be restricted to a maximum gross floor area of thirty thousand (30,000) square feet, exclusive of any floor area devoted to off street parking or loading facilities.

(Ord. 80-5, 1-21-1980)

5. The site plan for the shopping center shall be reviewed by the Zoning Administrator.

(Ord. 80-5, 1-21-1980; amd. 1984 Code)

6. All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold at retail on the premises where produced.

(Ord. 80-5, 1-21-1980)

7. All business, servicing, or processing, except for off street parking or loading, shall be conducted within completely enclosed buildings. The normal service and sales offered at eating and drinking establishments are excluded from this provision. the City Council may waive this provision by designating certain days on which business establishments may conduct their businesses outside the building or structure. Provided, however, that the sale and storage of seasonal merchandise at retail shall be permitted in accordance with the provisions of Section 6-2-23 of this Title.

(Ord. 80-5, 1-21-1980; amd. Ord. 88-115, 6-6-1988)

8. All outside storage areas of goods, materials and products shall be screened in accordance with Subsection 5-10-3.7 of this Code. Lighting of the facility shall be directed away from surrounding properties. Provided, however, that the sale and storage of seasonal merchandise at retail shall be permitted in accordance with the provisions of Section 6-2-23 of this Title.

(Ord. 93-14, 1-19-1993)

9. Processes and equipment employed within the B1 district shall comply with the provisions of Chapter 14 of this Title.

(Ord. 80-5, 1-21-1980)

#### **6-7A-5: AREA REQUIREMENTS:**

The minimum area for each B1 district shall be twenty thousand (20,000) square feet and the maximum area shall be ten (10) acres.

(Ord. 80-5, 1-21-1980)

#### **6-7A-6: LOT WIDTH REQUIREMENTS:**

There are no lot width requirements in the B1 district.

(Ord. 80-5, 1-21-1980)

#### **6-7A-7: YARD REQUIREMENTS:**

The minimum yards required in the B1 district shall be as follows:

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1. Where a side lot line of the B1 district coincides with a side or rear lot line in an adjacent residence district or is across an existing or proposed right-of-way from property located in a residence district, a yard shall be provided along such side lot line as follows:
    - 1.1. Where the B1 district abuts a lot located in an R1A, E1, E2, or AG district, the yard provided shall be not less than fifteen (15) feet in depth.
    - 1.2. Where the B1 district abuts a lot located in an R1B, R2, R3, R4, or R5 district, the yard provided shall be not less than twelve (12) feet in depth.
    - 1.3. Where the B1 district is across an existing or proposed right-of-way from property located in an R1A, E1, E2, or AG district, the yard provided shall be not less than fifteen (15) feet in depth as measured from the edge of the existing or proposed right-of-way abutting the B1 district.

(Ord. 80-5, 1-21-1980)

- 1.4. Where the B1 district is across an existing or proposed right-of-way from property located in an R1B, R2, R3, R4, or R5 district, the yard provided shall be not less than twelve (12) feet in depth as measured from the edge of the existing or proposed right-of-way abutting the B1 district.

(Ord. 93-14, 1-19-1993)

2. Where a rear lot line of the B1 district coincides with a side or rear lot line in an adjacent residence district or across an existing or proposed right-of-way from property located in a residence district, a yard shall be provided along such rear lot line as follows:
  - 2.1. Where the B1 district abuts a lot located in an R1A, E1, E2, or AG district, the yard provided shall not be less than fifteen (15) feet in depth.
  - 2.2. Where the B1 district abuts a lot located in an R1B, R2, R3, R4, or R5 district, the yard provided shall be not less than twelve (12) feet in depth.
  - 2.3. Where the B1 district is across an existing or proposed right-of-way from property located in a R1A, E1, E2, or AG district, the yard provided shall be not less than fifteen (15) feet in depth as measured from the edge of the existing or proposed right-of-way abutting the B1 district.

(Ord. 80-5, 1-21-1980)

- 2.4. Where the B1 district is across an existing or proposed right-of-way from property located in an R1B, R2, R3, R4, or R5 district, the yard provided shall be not less than twelve (12) feet in depth as measured from the edge of the existing or proposed right-of-way abutting the B1 district.

(Ord. 93-14, 1-19-1993)

3. Where the extension of a front or side lot line coincides with a front lot line of an abutting lot located in a residence district or is across an existing or proposed right-of-way from property located in a residence district, a yard equal in depth to the minimum front yard required by this Title on such abutting residential lot shall be provided along such front or side lot lines.

(Ord. 80-5, 1-21-1980)

### **6-7A-8: HEIGHT LIMITATIONS/BULK REGULATIONS:**

The maximum floor area ratio for all buildings and structures in the B1 district shall be 0.325 and the maximum height shall be three (3) stories not to exceed forty (40) feet.

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(Ord. 91-52, 4-3-1991)

CHAPTER 7  
BUSINESS DISTRICTS

**ARTICLE B. B2 COMMUNITY SHOPPING CENTER DISTRICT**

SECTION:

**6-7B-1: INTENT:**

The B2 community shopping center district is intended to accommodate the needs of a much larger consumer population than is served by the neighborhood convenience shopping center district. A wider range of uses and structure sizes is permitted for both daily and occasional shopping. These facilities shall be in the form of a shopping center.

(Ord. 80-5, 1-21-1980)

**6-7B-2: PERMITTED USES:**

No building, structure, or parcel of land shall be used and no building or structure shall be erected, altered, or enlarged which is arranged, intended, or designed for other than a shopping center which includes any of the following uses:

1. Any permitted use in the B1 district, except dwelling units.

(Ord. 90-211, 10-2-1990)

2. Veterinary offices.

(Ord. 08-114, 6-17-2008)

3. Antique shops.
4. Art shops or galleries, but not including auction rooms.
5. Bicycle sales, rental, and repair stores.
6. Blueprinting and photostating establishments.
7. Book and stationery stores.
8. Camera and photographic supply stores.
9. Carpet and rug stores, retail sales.
10. Catering establishments.
11. China and glassware stores.
12. Clothing and costume rental stores.
13. Coin and philatelic stores.
14. Custom dressmaking establishments.
15. Dairy product establishments, but not including processing or bottling.

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16. Department stores and discount stores.
  17. Drinking establishments.
  18. Dry goods stores.
  19. Electrical appliance stores including radio and television sales, and repair.
  20. Employment agencies.
  21. Frozen food stores, including locker rental in conjunction therewith.
  22. Furniture stores, including upholstering when conducted as part of the retail operations and secondary to the principal use.
  23. Furrier shops, including the incidental storage and conditioning of furs.
  24. Garden supply, tool, and seed stores.
  25. General retail.
  26. Hearing aid stores.
  27. Hobby shops, for retail of items to be assembled or used away from the premises.
  28. Household appliance stores.
  29. Interior decorating shops, including upholstering and making of draperies, slipcovers, and other similar articles, when conducted as a part of the retail operations and secondary to the principal use.
  30. Jewelry stores, including watch repair.
  31. Leather goods and luggage stores.
  32. Locksmith shops.
  33. Mail order, catalog store.
  34. Millinery shops.
  35. Musical instrument sales and repair.
  36. Optician—Sales, retail.
  37. Orthopedic and medical appliance stores.
  38. Paint, glass, and wallpaper stores.
  39. Pet shops.
  40. Phonograph record and sheet music stores.
  41. Photography studios, including the developing of film and pictures when conducted as part of the retail business on the premises.
  42. Picture framing, when conducted for retail trade on the premises only.

(Ord. 90-211, 10-2-1990)

43. Secondhand stores and rummage shops.
44. Sewing machine sales and service.
45. Shoe stores.
46. Sporting goods stores.