

PROPERTY ADDRESS:
3, 13, 15, & 21 S. MAIN STREET
NAPERVILLE, IL 60540

P.I.N.S
07-13-418-004
07-13-418-005
07-13-418-006
07-13-418-007

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

OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR MAIN STREET PROMENADE – PHASE III

This Owner's Acknowledgement and Acceptance Agreement for Main Street Promenade – Phase III Subdivision ("Agreement") located at 3, 13, 15, & 21 S. Main Street, Naperville, IL 60540, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("City" or "City of Naperville"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and RPAI Naperville Main North LLC, a Delaware limited liability company c/o Retail Properties of America ("OWNER AND DEVELOPER"), with offices at 2021 Spring Road, Suite 200, Oak Brook, IL 60526. The City and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

RECITALS

A. This Agreement pertains to certain real property located within the corporate limits of the City of Naperville known collectively as the ("SUBJECT PROPERTY") and listed as follows:

1. 3 S. Main Street, Naperville, IL 60540, PIN 07-13-418-006;
2. 13 & 15 S. Main Street, Naperville, IL 60540, PIN 07-13-418-007;
3. 21 S. Main Street, Naperville, IL 60540, PIN 07-13-418-013;
4. PINs 07-13-418-004 and 07-13-418-005, no common address.

B. OWNER AND DEVELOPER is the owner of the SUBJECT PROPERTY.

C. The SUBJECT PROPERTY is currently subject to the terms and conditions set forth in the following ordinance, approved for the SUBJECT PROPERTY by the Naperville City Council on December 3, 2008:

Ordinance 08-222 An Ordinance amending the zoning ordinance by rezoning certain properties.

D. OWNER AND DEVELOPER has petitioned the City for revocation of Ordinances 08-221, a Preliminary/Final Subdivision Plat for the Main Street Promenade Addition & Owner's Acknowledgement and Acceptance agreement and 08-223, a major change to the PUD and Preliminary/Final Plat for PUD for Main Street Promenade Addition in order to remove the SUBJECT PROPERTY from the terms of the PUD established in 2008. Pursuant to a petition by the OWNER AND DEVELOPER, on June 2, 2020, the City revoked Ordinances 08-221 a Preliminary/Final Subdivision Plat for the Main Street Promenade Addition & Owner's Acknowledgement and Acceptance agreement and 08-223 a Major Change to the PUD and Preliminary/Final Plat for PUD for Main Street Promenade Addition in order to remove the SUBJECT PROPERTY from the terms of the PUD established in 2008.

E. OWNER AND DEVELOPER has also petitioned the City for the following entitlements collectively known as the Main Street Promenade – Phase III Subdivision Ordinances (“**Main Street Promenade – Phase III Subdivision Ordinances**”):

- A conditional use to establish a new Planned Unit Development on the SUBJECT PROPERTY; and
- A Preliminary/Final Planned Unit Development Plat for Main Street Promenade - Phase III (“**Preliminary/Final PUD Plat**”) with deviations for the following: to reduce the amount of required off-street parking; to permit parking in the required interior yard; and to increase the permitted building setback; and
- A Preliminary/Final Subdivision Plat for Main Street Promenade - Phase III (“**Preliminary/Final Subdivision Plat**”).

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

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

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY including, but not limited to, the Main Street Promenade – Phase III Subdivision Ordinances.

3. **Development of the SUBJECT PROPERTY.** OWNER AND DEVELOPER shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with final engineering plans prepared by Civil & Environmental Consultants, Inc., dated February 10, 2020, last revised May 20, 2020 (“**Final Engineering Plans**”) at its sole cost unless otherwise provided herein.
4. **School Donation: \$0** (based on 43 one bedroom apartment units and 4 two bedroom apartment units. This amount includes a credit for 5 single-family detached residences that were demolished in approximately 2008.), in accordance with Table A (attached). OWNER AND DEVELOPER acknowledges that the required school donation amount (\$0) 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.
5. **Park Donation: \$191,538.84** (based on 43 one bedroom apartment units and 4 two bedroom apartment units. This amount includes a credit for 5 single-family detached residences that were demolished in approximately 2008.), in accordance with Table B (attached). OWNER and DEVELOPER acknowledges that the required park donation amount (\$191,538.84) 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. OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required park donation 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.

OWNER and DEVELOPER agrees that payment of the park donation amount established herein shall not be paid under protest, or otherwise objected to, and shall be paid prior to recording the Preliminary/Final Subdivision Plat for the Subject Property in accordance with the provisions set forth in Section 7-3-5:5.2.1 and Subsection 5:5.2.1.1 of the Naperville Municipal Code.

6. **Fees Due.** OWNER AND DEVELOPER shall pay all fees (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code, as amended from time to time, including, but not limited to, the following:
 - 6.1 **Engineering Review Fee:** \$4,818.94 (1.65% of the approved engineer’s cost estimate). This fee is due prior to recording the Preliminary/Final Plat of Subdivision.
 - 6.2 **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City’s water or sanitary system, OWNER AND DEVELOPER shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code, as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

- 6.3 Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND DEVELOPER shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- 6.4 Recapture.** The City of Naperville's Department of Utilities-Water/Wastewater installed 270 linear feet of 12 inch watermain along Main Street adjacent to the SUBJECT PROPERTY. In order to tap on to this watermain, the OWNER AND DEVELOPER will pay a recapture fee of \$23,448.23 in full satisfaction of said watermain recapture.
- OWNER AND DEVELOPER agrees that payment of the watermain recapture fee amount established herein shall not be paid under protest, or otherwise objected to, and shall be paid prior to recording the Preliminary/Final Subdivision Plat for the SUBJECT PROPERTY.
- 6.5 Parking Fee-in-lieu.** OWNER AND DEVELOPER is required to pay a parking fee-in-lieu of payment in order to benefit from the use of the parking facilities provided in the downtown area. Per Section 11-2E-3 (Special Service Area Reimbursement Policy: Parking Fee in Lieu of Providing Parking in the Downtown), the OWNER AND DEVELOPER shall make a parking fee in lieu payment to the City in the amount of \$158,650.00. This fee is due prior to recording the Preliminary/Final Plat of Subdivision.
- 6.6 Legal Notice Reimbursement.** OWNER AND DEVELOPER is required to pay \$164.00 to cover the cost of publishing the legal notice for the April 8, 2020 Planning and Zoning Commission Meeting in the Daily Herald.
- 7. Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of \$321,262.70 (110% of the approved engineer's cost estimate) which guarantees the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("Public Improvements"). Financial surety shall be received and approved prior to issuance of a site development permit. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, the OWNER AND DEVELOPER shall remain obligated for completion of said Public Improvements and/or (at the City's sole discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the City, the OWNER AND DEVELOPER shall provide the City

with a maintenance surety for the Public Improvements in a form approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

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

8. **Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Preliminary/Final Subdivision Plat has been recorded and until the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.
9. **Streetscape.** The OWNER AND DEVELOPER agrees to install the streetscape materials and landscaping materials on and adjacent to the SUBJECT PROPERTY as depicted on the landscape plan prepared by Kimley Horn and Associates, Inc. dated February 10, 2020, last revised March 17, 2020. The streetscape must be completed to the satisfaction of the City Engineer no later than two years from OWNER AND DEVELOPER'S receipt of a building permit. The City shall have the right to withhold issuance of any occupancy permits for failure to install the streetscape as depicted on the landscape plan. Said timeframe may be modified by written approval of the City Engineer.
10. **Downtown Special Service Areas.** The SUBJECT PROPERTY is not currently within the boundary of any Special Service Area. Special Service Area 21 (the City's downtown property owners' share of debt service for the Van Buren Parking Garage) and Special Service Area 26 (the City's downtown property owners' share of downtown maintenance and marketing costs) are both due to expire in October of 2020. The City will create a new downtown maintenance and marketing SSA to replace SSA 26. The OWNER AND DEVELOPER acknowledges and agrees that the SUBJECT PROPERTY will be subject to the newly created SSA, and every subsequent SSA.
11. **General Conditions.**
 - 11.1 **Binding Effect.** City and OWNER AND DEVELOPER acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the City and the OWNER AND DEVELOPER and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.

- 11.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
- 11.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 11.4 **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party.
- 11.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 11.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 11.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 11.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 11.13 hereof and shall terminate, without further action by either Party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.
- 11.9 **Automatic Expiration.** If the Preliminary/Final Plat of Subdivision for the SUBJECT PROPERTY is not recorded within five (5) years of the date of approval of the ordinance approving the Preliminary/Final Plat of Subdivision and this Agreement by the City Council, the Preliminary/Final Plat of Subdivision and this Agreement shall automatically lapse and become null and void without further action by the City.
- 11.10 **Survival.** The terms and conditions set forth in the following paragraphs of this Agreement shall survive the expiration or termination of this Agreement: 1 through 8, 10, and 11.1, 11.2, 11.5, 11.6 and 11.10.
- 11.11 **Authority to Execute/OWNER AND DEVELOPER.** The undersigned warrants that he/she is the OWNER AND DEVELOPER of the SUBJECT PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER of the SUBJECT PROPERTY in the case of a corporation,

partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.

- 11.12 **Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.
- 11.13 **Effective Date.** The effective date of this Agreement (“Effective Date”) shall be the date upon which it is fully executed by both Parties hereto.

/SIGNATURES ON FOLLOWING PAGES/

OWNER AND DEVELOPER:

Scott R. Miller
[Signature]

SCOTT R MILLER
[Printed name]

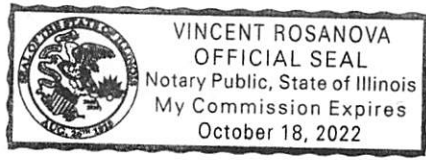
VICE PRESIDENT DEVELOPMENT
[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by SCOTT R. Miller
this 26th day of MAY 2020.

V. M. Rosanova
Notary Public

VINCENT M. ROSANOVA
Print Name



Given under my hand and official seal this 26th day of MAY, 2020.

-Seal-

V. M. Rosanova
Notary Public
My Commission Expires: _____

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____

School Donation Worksheet

Name of Subdivision Main Street Promenade - Phase III

School Donation = **Land** **-0.0201** **Cash** **(\$6,397.83)** = Total Land x \$318,300.00
 =Round (((Total Elementary Pop. x 0.0231) + (Total Jr. High Pop. x 0.0208) + (Total High School Pop x 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	0.222	0.000	1.856	0.000	2.746	0.000	
-5 3-bedroom	0.268	-1.340	0.486	-2.430	0.153	-0.765	0.135	-0.675	1.913	-9.565	2.955	-14.775
4-bedroom	0.371	0.000	0.702	0.000	0.259	0.000	0.242	0.000	1.985	0.000	3.532	0.000
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										0.000		0.000
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									1.400	0.000	1.400	0.000
43 1-Bedroom	0.058	2.494	0.032	1.376	0.012	0.516	0.013	0.559	1.653	71.079	1.710	73.530
4 2-Bedroom	0.129	0.516	0.064	0.256	0.031	0.124	0.038	0.152	1.744	6.976	2.007	8.028
3-Bedroom	0.199	0.000	0.115	0.000	0.073	0.000	0.083	0.000	2.005	0.000	2.475	0.000
People Produced		1.670		-0.798		-0.125		0.036		68.490		66.783

-0.887

Park Donation Work Sheet

Name of Subdivision Main Street Promenade - Phase III

Park Donation = **Land** **Cash**
 0.5919 **\$191,538.84** = 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						
Detached												
Single-family												
2-bedroom	0.127	0.000	0.327	0.000	0.102	0.000	0.118	0.000	1.779	0.000	2.453	0.000
-5 3-bedroom	0.244	-1.220	0.440	-2.200	0.179	-0.895	0.177	-0.885	1.892	-9.460	2.930	-14.650
4-bedroom	0.348	0.000	0.522	0.000	0.235	0.000	0.265	0.000	2.116	0.000	3.486	0.000
5-bedroom	0.333	0.000	0.533	0.000	0.262	0.000	0.279	0.000	2.344	0.000	3.750	0.000
Attached												
Single-Family												
1-Bedroom										0.000		0.000
2-Bedroom	0.072	0.000	0.091	0.000	0.044	0.000	0.080	0.000	1.610	0.000	1.897	0.000
3-Bedroom	0.157	0.000	0.178	0.000	0.060	0.000	0.113	0.000	1.746	0.000	2.253	0.000
4-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000	0.198	0.000	2.127	0.000	3.053	0.000
Apartments												
Efficiency									1.210	0.000	1.210	0.000
43 1-Bedroom	0.015	0.645	0.033	1.419	0.013	0.559	0.013	0.559	1.691	72.713	1.764	75.852
4 2-Bedroom	0.037	0.148	0.063	0.252	0.028	0.112	0.030	0.120	1.748	6.992	1.906	7.624
3-Bedroom	0.037	0.000	0.152	0.000	0.091	0.000	0.083	0.000	2.330	0.000	2.692	0.000
People Produced		-0.427		-0.529		-0.224		-0.206		70.245		68.826