

PROPERTY ADDRESS:

Lot 4 of the Nokia Campus
Northwest Corner of Naperville Rd.
and Warrenville Rd., Naperville, IL

P.I.N.S

05-32-300-014 [Milton Township]
08-05-027-036 [Lisle Township]

RETURN TO:

City of Naperville
City Clerk's Office
400 South Eagle Street
Naperville, IL 60540

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR NAPER COMMONS**

This Owners' Acknowledgement and Acceptance Agreement ("**Agreement**") for the Naper Commons subdivision ("**Naper Commons**" or "**Naper Commons Subdivision**") to be located on Lot 4 of the Nokia Campus as described herein, 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**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Pulte Home Company, LLC, with offices at 1900 East Golf Road, Suite 300, Schaumburg Illinois 60173, ("**OWNER AND DEVELOPER**"). 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 approximately sixty-five (65) acres of real property generally located at the northwest corner of Naperville Road and Warrenville Road within the corporate limits of the City of Naperville, Illinois and is commonly referenced as Lot 4 of the Nokia Campus legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto ("**SUBJECT PROPERTY**").

B. The Subject Property is currently improved with a surface parking lot that once served the Nokia Campus.

C. The OWNER AND DEVELOPER petitioned the CITY for approval of the following preliminary entitlements ("**Preliminary Entitlements**") under the Naperville Municipal Code ("**City Code**" or "**Code**"):

- i. Preliminary Planned Unit Development Plat per Section 6-4-5 (PUD Plat Procedures) of the City Code with the following deviations:
 - a. Reduction of the required front yard setback from 25' to 20 per Section 6-6C-7:1 (R2 District: Yard Requirements); and

- b. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 14' total for 2 side yards and 6' minimum per side for the sixty-four foot (64') wide lots (the "Estates") per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - c. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 12' total for 2 side yards and 6' minimum per side for the fifty-one foot (51') wide lots (the "Meadows") per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - d. Reduction of the required interior yard setback from 16' total for 2 side yards and 8' minimum per side to 10' total for 2 side yards and 5' minimum per side for the ranch-style Meadows lots per Section 6-6C-7:1 (R2 District: Yard Requirements); and
 - e. Permit the eaves of the ranch-style homes to encroach 6" into the required 5' side yard easement per Section 6-2-3:3.3 (Yard Requirements: Permitted Obstructions); and
- ii. Preliminary Plat of Subdivision in order to develop sixty-six (66) townhomes and one hundred and sixty-one (161) single-family detached homes for a total of two hundred and twenty-seven (227) dwelling units per Section 7-2-2 (Subdivision Plat Procedures); and
 - iii. Conditional use to permit single-family attached dwelling units per Section 6-6C-3:5 (R2 District: Conditional Uses); and
 - iv. Variance to eliminate the masonry requirement for the single-family attached dwelling units per Section 5-2C-3 (Exterior Wall Construction); and
 - v. Deviation to increase the maximum depth of the storage in the storm water basin from the permitted 6.0' to 7.4 per Section 2.5.4.3 of the Design Manual for Public Improvements.

D. On April 20, 2021 the Naperville City Council approved OWNER AND DEVELOPER'S requests as set forth in Recital C above and passed the following ordinances ("**Naper Commons Ordinances**") which will take effect upon recordation with the Office of the DuPage County Recorder. If said ordinances are not recorded **on or before October 29, 2021**, they provide by their terms that they will automatically become void and without further force or effect without any action being taken by either OWNER AND DEVELOPER or the CITY:

- 21- _____ An Ordinance approving the Preliminary Plat of Subdivision for Naper Commons ("**Preliminary Plat of Subdivision**") (attached hereto as **Exhibit B**) and the Owner's Acknowledgement and Acceptance Agreement for Naper Commons;
- 21- _____ An Ordinance approving a preliminary planned unit development plat ("**Preliminary PUD Plat**") with certain deviations for Naper Commons.
- 21- _____ An Ordinance approving a conditional use to permit single-family attached dwelling units in the R2 District for Naper Commons.
- 21 _____ An Ordinance granting a variance from Section 5-2C-3 (Exterior Wall Construction) for Naper Commons
- 21- _____ An Ordinance granting a variance to permit a Storm Water Deviation

E. The SUBJECT PROPERTY is part of property commonly referenced as the Nokia Campus ("Nokia Campus") created by a Preliminary/Final Plat of Subdivision approved by the Naperville City Council on April 7, 2020 as Ordinance Number 20-035.

F. In addition to the Naper Commons Ordinances above, development of the SUBJECT PROPERTY shall also be subject to compliance this Agreement, the Naperville Municipal Code then in effect, and with final approved plans, including but not limited to final engineering plans, a final storm water report, a final engineer's cost estimate, a final landscape plan, a final tree preservation plan, a final subdivision plat, a final planned unit development plat, approved preliminary elevations for the single-family attached units, and the approved preliminary elevations for the single-family detached units.

The provisions of the Naperville Municipal Code, as amended from time to time, shall govern the Subject Property; provided that where there is a clear and direct conflict between the Naperville Municipal Code and the provisions of this Agreement or the Naper Commons Ordinances where such provisions cannot be read together, the provisions of this Agreement and the Naper Commons Ordinances shall prevail. In the event of any conflict between the provisions of this Agreement and the Naper Commons Ordinances, the Naper Commons Ordinances shall prevail.

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

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and subject to the terms and conditions set forth and referenced 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; (iii) all Ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY, including but not limited to the Naper Commons Ordinances as those terms are defined herein.
- 3. School Donation.**

3.1 A portion of the SUBJECT PROPERTY is located in Community Unit School District #203 and a portion of the SUBJECT PROPERTY is located in Community Unit School District #200.

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

3.3. OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required school donation pursuant to the "Per Permit Payment" provisions set forth in Section 7-3-5:5.2.2 of the Naperville Municipal Code. Said Per Permit Payment shall be calculated

based on the school donation table set forth in Section 7-3-5 of the Naperville Municipal Code in effect at the time of the issuance of each building permit and shall be paid prior to issuance of said building permits.

3.4 Notwithstanding the foregoing, OWNER AND DEVELOPER reserves its right to file an objection challenging the accuracy of the fair market land value set forth in 7-3-5 of the City Code for purposes of calculating the school land-cash donation due to Community Unit School District #200 hereunder.

4. Park Donation:

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

OWNER AND DEVELOPER will work with the Naperville Park District (“**Park District**”) to come to an agreement (“**Development Agreement**”) setting forth their respective responsibilities regarding the design, construction, timing, and payment of the Linear Park improvements, as Linear Park is defined below, and payment of any remaining cash contribution.

4.1.1 **Linear Park Site Donation.** As part of the Development Agreement, OWNER AND DEVELOPER shall donate an approximately 2.06 acre parcel of land, depicted as Outlot D on the Preliminary Plat of Subdivision attached hereto as Exhibit B, (“**Linear Park**”) to the Park District subject to the terms and conditions set forth herein.

The Linear Park is an integral part of OWNER AND DEVELOPER’S proposal for development of the SUBJECT PROPERTY and constitutes a significant component of the development’s creative element as required in the City Code for a planned unit development.

In a letter from the Park District dated April 7, 2021 (attached hereto as **Exhibit C**), the Park District indicated its willingness to enter into a Development Agreement with the OWNER AND DEVELOPER, and further indicated its agreement to the concept park design (attached as page 2 to Exhibit C) as to the size and character of the Linear Park with certain exceptions.

The Development Agreement shall be subject to City Council approval as a negotiated land-cash agreement permitted under Section 7-3-5 of the Code to be considered for approval in conjunction with the first final plat of subdivision for Naper Commons.

The Parties anticipate that the Development Agreement will set forth an alternative basis for calculating and paying the required park contribution. A total park contribution may be negotiated based on the total number of dwelling units and assumed bedroom counts therefore, with Pulte making a lump sum payment of the total park contribution (less credits for land donation and park improvements constructed by Pulte) to the park district upon the Park District’s completion of the park improvements as specified in the Development Agreement.

A fully executed version of the approved Development Agreement shall be provided to the Zoning Administrator prior to recordation of the first final plat of subdivision for Naper Commons.

4.1.1.1 Conveyance of Linear Park OWNER AND DEVELOPER shall convey the Linear Park to the CITY for subsequent conveyance to the Naperville Park District by a plat of dedication within sixty (60) days of a written request to do so from the CITY , which shall not occur until after acceptance of the Linear Park by the Park District in accordance with the procedures and requirements of the CITY and the Park District. Said sixty (60) day timeframe may be modified by written agreement of the City Engineer. Easements shall be reserved on the Linear Park as set forth in Section 16.3 hereof.

4.1.1.2 Relocation of Storm Sewer. A storm sewer is currently located under the Linear Park. OWNER AND DEVELOPER agrees to work with the Park District regarding relocation of said storm sewer to a location that will result in minimized interference with Park District activities. Said relocation shall be at the sole cost of OWNER AND DEVELOPER, shall be reflected on the first final plat of subdivision for Naper Commons, and shall be accomplished in conjunction with the Linear Park Improvements.

4.1.2 Real Estate Taxes. OWNER AND DEVELOPER shall be liable to pay in full all real estate property taxes on the Linear Park accruing through the date of acceptance of the Linear Park by City Council action. OWNER AND DEVELOPER shall pay such taxes within fifteen (15) calendar days of notice thereby issued by the CITY. Notwithstanding the foregoing, OWNER AND DEVELOPER may opt to object to a required tax payment in which case OWNER AND DEVELOPER shall be solely responsible for payment of all taxes deemed owed and any associated fees and penalties therefor within seven (7) calendar days of issuance of a final decision on such objection. OWNER AND DEVELOPER agrees that failure to pay all real estate property taxes in accord with the provisions set forth above shall result in the CITY'S ability to pay such taxes and place a lien therefor against the SUBJECT PROPERTY, or any portion thereof as determined by the CITY , plus interest, attorney's fees and costs and recording costs, or alternatively for the CITY to cease issuance of permits related to development of the SUBJECT PROPERTY.

- 5. Fees Due.** OWNER AND DEVELOPER shall pay all fees (which fees shall not be paid under protest or otherwise objected to as set forth or referenced herein and required by the Naperville Municipal Code as amended from time to time (except as specifically set forth in Section 3.4 hereof). (Note: a revised schedule of CITY fees, entitled "An Ordinance Amending Articles E (Annexation Fees), F (Development, Zoning and Subdivision Fees) and H (Fees for Construction and New Development), Chapter 9 (Municipal Finances), of Title 1 (Administration) of the Municipal Code" was approved by the Naperville City Council on July 21, 2020 by Ordinance 20-067, effective January 1, 2021 revising the prior fee schedule. The revised fee schedule shall be applicable to all aspects of the Naper Commons development.)

Fees which are due include, but are not limited to the following:

- a. **Engineering Review Fee.** The Engineering Review Fee for final engineering will be \$150 per page for Final Engineering Review. This fee is due prior to release of

City staff's final engineering plan review comments for the SUBJECT PROPERTY.

- b. **Site Permit Fee.** The Site Permit Fee will be determined based on 1.5% of the approved engineer's cost estimate. This fee is due prior to pre-construction meeting for the SUBJECT PROPERTY.
- c. **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the CITY'S water* 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.

(*Sanitary service for the SUBJECT PROPERTY is not provided through the City of Naperville.)

- d. **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 the provisions of Title 8 of the Naperville Municipal Code then in effect and the Electric Service Rules and Policies as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- e. **Northeast Waterworks Pump Station.** A recapture fee of \$133,289.70 (\$1,751.00/per acre) shall be paid to the CITY by the OWNER AND DEVELOPER for the Northeast Waterworks Pump Station prior to the recordation of the first final plat of subdivision for Naper Commons.
- f. **Other Fees.** Any resubmission fees, or other applicable fees not listed in (a) through (e) above, shall be charged in accord with the fee schedule in Section 1-9F (Municipal Finances: Development, Entitlement and Other Required Application Process Fees) and Section 1-9H (Municipal Finances: Fees for Construction and New Development) as effective on January 1, 2021.

6. Tree Preservation and Landscape Requirements.

6.1 **Tree Preservation.** OWNER AND DEVELOPER shall preserve those existing trees as depicted on the Preliminary Tree Preservation Plans prepared by Signature Design Group, dated September 14, 2020, last revised February 24, 2021 ("**Preliminary Tree Preservation Plans**").

Prior to City approval of final engineering, OWNER AND DEVELOPER shall submit a final tree preservation plan ("**Final Tree Preservation Plan**") which shall be approved in writing by the City Forester so long as conforms to the Preliminary Tree Preservation Plans. The Final Tree Preservation Plan shall be attached to and incorporated as an exhibit to the CITY ordinance approving the Final Planned Unit Development Plat for the Naper Commons Subdivision.

During development of the Naper Commons Subdivision, OWNER AND DEVELOPER shall cause those trees to be preserved which are depicted on the Final Tree Preservation Plan. If, during development of the SUBJECT PROPERTY, trees are removed that should have been preserved as required by the Final Tree Preservation Plan, OWNER AND DEVELOPER shall cooperate with reasonable direction by the City Forester relative to replacement or "mitigation" trees and shall further be subject to the compensation and fine provisions of Section 5-10-5:5.5.3 and 5-10-5:6 of the Naperville Municipal Code then in effect. Failure of the OWNER AND DEVELOPER to timely comply with direction by the City Forester or to comply with the above-referenced Code provisions shall result in the CITY having the option to cease issuance of building permits, occupancy permits, and/or other permits related to the SUBJECT PROPERTY or any part thereof.

6.2 Landscape Plan. A preliminary landscape plan ("**Preliminary Landscape Plan**") was approved as part of the Ordinance approving the Preliminary Planned Unit Development with certain deviations for Naper Commons. A final landscape plan ("**Final Landscape Plan**") shall be approved with the ordinance approving the Final Planned Unit Development for the SUBJECT PROPERTY and shall be used in the development of the Naper Commons Subdivision and as referenced herein.

7. Buffer Between the FPD of DuPage County and Naper Commons Residences.

7.1 OWNER AND DEVELOPER shall create one or more outlots around the perimeter of the SUBJECT PROPERTY where the SUBJECT PROPERTY is adjacent to property owned by the Forest Preserve District of DuPage County which shall provide vacant buffer space between the real property owned by the Forest Preserve District of DuPage County and the rear property line of adjacent residential properties located on the SUBJECT PROPERTY ("FPD Buffer"). Said FPD Buffer shall generally be not less than twenty-five feet (25') in width as depicted on the Preliminary Plat of Subdivision (noting that there is one point where its width is reduced circa lot 114 to approximately ten feet (10')).

7.2 The FPD Buffer shall be delineated by installation of a split rail fence along the property line between the Buffer and the adjacent residential lots which shall be installed by the OWNER AND DEVELOPER by July 31, 2022. Said fencing shall be included in the financial surety described in Section 18 below.

7.3 The FPD Buffer shall be improved with a native grass mix as depicted on the Preliminary Landscaping Plans, prepared by Signature Design Group, dated September 14, 2020, last revised March 15, 2021. Installation of said native grass mix shall be completed by the OWNER AND DEVELOPER and approved by the City Engineer on or before July 31, 2022, or such extension as may be agreed to in writing by the City Engineer. Said fencing shall be included in the financial surety described in Section 18 below.

7.4 The OWNER AND DEVELOPER shall convey the FPD Buffer to the Naper Commons homeowners' association formed for single-family residences within the Naper Commons subdivision (the "Naper Commons Single-Family HOA") within five (5) years of the Effective Date of this Agreement. Prior to such conveyance OWNER AND DEVELOPER will record a covenant on the FPD Buffer property containing conditions regarding the upkeep and maintenance thereof, including but not limited to requiring that no structures be placed on it and requiring that it be maintained in good condition (e.g. mowed appropriately) with native landscaping consistent with the Final landscape Plan approved for the SUBJECT PROPERTY

(“**FPD Buffer Covenant**”). Such FPD Buffer Covenant shall be in a form approved by the City Attorney.

7.5 OWNER AND DEVELOPER shall be responsible for the upkeep, mowing, maintenance, and preservation of the FPD Buffer in compliance with the Final Landscape Plan prior to its conveyance to the Naper Commons Single-Family HOA.

7.6 The timing requirements set forth in this Section may be extended upon the written agreement of the City Engineer.

8. Buffer between Naper Commons Residences and the Fairmeadow Subdivision.

8.1 OWNER AND DEVELOPER shall create an outlot, as generally depicted on the Preliminary Plat of Subdivision as Outlot C, between the rear property line of residential properties on Lots 1 through 10 of the SUBJECT PROPERTY and residential properties located in the adjacent Fairmeadow Subdivision (the “Fairmeadow Buffer”).

8.2 The Fairmeadow Buffer shall be delineated by installation of a split rail fence long the shared property line with the lots in the Fairmeadow subdivision to be installed by the OWNER AND DEVELOPER on or before September 30, 2022. OWNER AND DEVELOPER shall obtain all necessary permits for the installation of said split rail fence. Said fencing shall be included in the financial surety described in Section 18 below.

8.3 The Fairmeadow Buffer shall be improved with landscaping comprised of a combination of deciduous, ornamental and evergreen trees as generally depicted on the Preliminary Landscaping Plans. Installation of said landscaping shall be completed by the OWNER AND DEVELOPER and approved by the City Engineer on or before September 30, 2022, or such extension as may be agreed to in writing by the City Engineer. Said landscaping shall be included in the financial surety described in Section 18 below.

8.4 The OWNER AND DEVELOPER shall convey the Fairmeadow Buffer to the Naper Commons Single-Family HOA within five (5) years of the Effective Date of this Agreement. Prior to such conveyance OWNER AND DEVELOPER will record a covenant on the Fairmeadow Buffer property containing conditions regarding the upkeep and maintenance thereof, including but not limited to requiring that no structures be placed on it and requiring that it be maintained in good condition by the HOA with landscaping consistent with the Final Landscape Plan approved for the SUBJECT PROPERTY (“**Fairmeadow Buffer Covenant**”). Such Fairmeadow Buffer Covenant shall be in a form approved by the City Attorney.

8.5 OWNER AND DEVELOPER shall be responsible for the upkeep, mowing, maintenance, and preservation of the Fairmeadow Buffer in compliance with the Final Landscape Plan prior to its conveyance to the Naper Commons Single-Family HOA.

8.6 The timing requirements set forth in this Section may be extended upon the written agreement of the City Engineer.

9. Dedication of Portion of Lucent Lane.

9.1 Lucent Lane Dedication. OWNER AND DEVELOPER shall dedicate, or cause to be dedicated, to the CITY, and the CITY shall accept dedication of Lucent Lane as depicted on

the Plat of Dedication (“**Lucent Lane Dedication**”), prepared by Cemcon, Inc. on September 14, 2020 and last revised on November 12, 2020 (the “Plat of Dedication”). The OWNER AND DEVELOPER shall cause the Plat of Dedication to be recorded prior to the approval a final plat of subdivision for the Subject Property.

9.2 Lucent Lane Improvement. A portion of the Lucent Lane Dedication, being that area depicted on the Preliminary Plat of Subdivision as Lucent Lane, is improved with an existing roadway (the “Existing Roadway”). The CITY hereby approves the modified geometry of the Existing Roadway as depicted in the preliminary engineering plan for Naper Commons, prepared by Cemcon Ltd., dated September 14, 2020, last revised on April 8, 2021 (“**Preliminary Engineering Plan**”). OWNER AND DEVELOPER shall be responsible for, at a minimum: i) milling and repaving Lucent Lane to variable thickness which shall not be less than two inches (2”) at any point; ii) removing existing street lights and installing the CITY’S standard fixtures; iii) installation of an eight foot (8’) pedestrian path along the north/east side of Lucent Lane; iv) completing the sidewalk extension and landscape enhancements on the west side of Lucent Lane; and v) installation of all required parkway trees (collectively the “**Lucent Lane Improvement**”). The Lucent Lane Improvement is generally depicted on the Preliminary Engineering Plan and the Preliminary Landscape Plan. The final design of the Lucent Lane Improvement may include additional pavement lifts to meet CITY’S required slopes and structural numbers, the final specifications of the Lucent Lane Improvement being subject to the review and approval of the City Engineer as part of the final engineering plans for the Subject Property. These requirements may be revised with the written approval of the City Engineer.

9.3 Road D Drive Improvement. A portion of the Lucent Lane Dedication, being that area depicted on the preliminary plat of subdivision as “Road D,” will be improved with a new roadway (the “**Road D Drive**”). The Road D Drive is generally depicted on the Preliminary Engineering Plan. The CITY preliminarily approves a one hundred and fifty foot (150’) radius for the Road D Drive, the location of all curb cuts, and modification of the adjacent parking lot improvements associated therewith are subject to approval of the final engineering. Road D Drive shall be subject to the review and approval of the City Engineer as part of the final engineering plans for the SUBJECT PROPERTY.

9.4 Completion and Conveyance of Road Improvements. The OWNER AND DEVELOPER shall submit the final engineering plans for the Lucent Lane Improvement and Road D Drive no later than with submission of the final subdivision plat for the SUBJECT PROPERTY for review and approval by the City Engineer. The Lucent Lane Improvement shall be substantially completed, as determined by the City Engineer, prior to issuance of any occupancy permits, whether temporary or final, for the SUBJECT PROPERTY. Road D shall be substantially completed as determined by the City Engineer, prior to the issuance of any non-model occupancy permit (whether temporary or final) for the SUBJECT PROPERTY. All outstanding punch-list items, including but not limited to street lights and landscaping, as determined by the City Engineer, must be completed to the satisfaction of the City Engineer within twelve (12) months of issuance of the any occupancy permits for the SUBJECT PROPERTY, whether temporary or final. In the absence of full completion of the punch-list items as set forth above and within the twelve (12) month timeframe, the CITY shall have the right to withhold issuance of any further occupancy permits for the SUBJECT PROPERTY. These requirements may be revised with the written approval of the City Engineer.

Upon completion of the Lucent Lane Improvement and Road D Drive, subject to the reasonable satisfaction of the City Engineer, OWNER AND DEVELOPER shall convey the Lucent Lane Improvement and Road D Drive to the CITY by bill of sale.

10. Reserved.

11. Lot 3 (Off-Site) and Lot 4 (On-Site) Parking Reconfiguration, Sidewalks, and Tree Preservation.

11.1 The Parties acknowledge and agree that certain improvements to the parking lot which is located in part on Lot 3 of the Nokia Campus and in part on Lot 4/SUBJECT PROPERTY will be completed by OWNER AND DEVELOPER in conjunction with the Naper Commons Subdivision improvements as described below subject to CITY approval of a Final Engineering Plan and Final Landscape Plans for Naper Commons. OWNER AND DEVELOPER will be responsible for obtaining owner authorizations and all required permits for these improvements.

11.2 OWNER AND DEVELOPER will reconfigure access to the parking improvements located on Lot 2 and Lot 3 of the Nokia Campus as generally depicted on the Preliminary Engineering Plan. The reconfiguration of the parking lot improvements will include tree preservation as depicted on the Preliminary Tree Preservation Plan.

11.2.1 The reconfiguration of the parking lot improvements on Lot 4 will include new sidewalk and new landscape enhancements as generally depicted on the Preliminary Landscape Plans.

11.3 OWNER AND DEVELOPER shall include one or more sheets in the applicable Final Engineering Plan and the Final Landscape Plan depicting the scope of said parking lot, sidewalk, and landscaping improvements the scope and geometry of which shall be approved if they are in substantial conformance with the scope and geometry thereof as depicted on the Preliminary PUD Plat. Subject to compliance with all applicable laws, including but not limited to the City Code, and contingent upon obtaining all necessary owner approvals and authorizations, and approval of Final Engineering and Final Landscape Plans, the CITY shall not object to the foregoing improvements.

12. Floodplain. No site development permit shall be issued for the SUBJECT PROPERTY until April 26, 2021 which is the date upon which the Letter of Map Revision issued by the Federal Emergency Management Agency (“**FEMA**”) on December 11, 2020 becomes effective.

13. Vacation of Public Utility and Drainage Easement. The CITY agrees that at final plat of subdivision, the portion of the public utility and drainage easement (“**PUDE Easement**”) created pursuant to that certain Public Utility Easement Grant dated September 30, 1997 and recorded with the Office of the DuPage County Recorder as Document R97-170103 which represents a sixty foot (60’) temporary construction easement may be vacated and replaced with a ten foot (10’) temporary construction easement. The ten foot (10’) PUDE easement granted by said easement shall remain in full force and effect.

14. Construction Parking Management Plan. OWNER AND DEVELOPER shall prohibit construction vehicles associated with the development of the SUBJECT PROPERTY from parking on residential streets including but not limited to streets in the Fairmeadow Subdivision and the Danada Woods Townhomes Subdivision.

15. Public Improvements. OWNER AND DEVELOPER shall construct the Public Improvements, as provided herein, at their sole cost, in compliance with the terms and conditions of this Agreement, the Naper Commons Ordinances, including all exhibits thereto, the provisions of the Naperville Municipal Code, as amended from time to time; all other ordinances in existence or passed with respect to the SUBJECT PROPERTY, and all other laws and regulations.

16. Easements.

16.1 PUDE, PCBMPs, Sidewalk, and Access Easements.

OWNER AND DEVELOPER shall grant easements to the CITY at no cost to the CITY upon, over, under, and through the SUBJECT PROPERTY pursuant to easement provisions approved by the City Attorney for public utilities, drainage, post-construction best management practices (PBCMPs), public sidewalks, and access as may be reasonably required by the CITY for the contemplated development of the SUBJECT PROPERTY as generally depicted on the Preliminary Engineering Plan and as may be needed, as determined by the CITY, to accommodate the installation of utilities as set forth on the Final Engineering Plans. Such easements shall be granted by final plat of subdivision for the SUBJECT PROPERTY. No building permit shall be issued prior to the grant of said easements, but nothing herein shall delay otherwise prevent the issuance of preliminary grading and site development permits which may be issued pursuant to standard CITY process at OWNER AND DEVELOPER'S sole risk.

16.2 Cross-Access Easement and Roadway Access for Second Point of Access to and from the SUBJECT PROPERTY

16.2.1 A cross-access easement was dedicated on portions of Lots 2 and 3 of the Nokia Campus as depicted ("**Cross-Access Area**") on the final plat of subdivision for the Nokia Campus approved by the Naperville City Council on April 7, 2020 and recorded with the Office of the DuPage County Recorder under recording number R2020-085330. ("**2020 Cross-Access Easement**").

Prior to recordation of any final plat of subdivision for the SUBJECT PROPERTY, OWNER AND DEVELOPER shall work with the CITY and the owner of Lots 2 and 3 of the Nokia Campus to cause the 2020 Cross-Access Easement to be amended ("**Amended Cross-Access Easement**"). The Cross-Access Area is a critical component of the residential development of the SUBJECT PROPERTY because it provides the second means of ingress and egress to the SUBJECT PROPERTY required for life-safety purposes. The Amended Cross-Access Easement shall be subject to review and approval of the City Engineer and the City Attorney prior to recordation. It is the intent of the Parties that the Amended Cross-Access Easement shall:

- (i) Require that the Amended Cross-Access Easement may not be terminated or amended to restrict use of the Cross-Access Easement or ingress/egress to Lot 4 without prior written approval of the City Council;
- (ii) Require that the owners of Lots 2 and 3 of the Nokia Campus shall, at their sole expense, keep and maintain the Cross-Access Area on their respective Lots (the "**Cross-Access Road**") in good order and repair, and improved with a

continuous impervious material (such as concrete or asphalt) of sufficient bearing strength so as to accommodate the vehicular traffic which will use the Cross-Access Road. The owners of Lots 2 and 3 of the Nokia campus shall be required to provide timely snow and ice removal for the Cross-Access Road;

- (iii) Require that the owners of Lots 2 and 3 shall grant the CITY the right of access upon, over and across the Amended Cross-Access Easement to inspect the Cross-Access Road and the right, but not the obligation, to perform any maintenance of said Cross-Access Road which either owner of Lot 2 and/or Lot 3 has failed to perform if such failure continues for thirty (30) calendar days after written notice from the CITY of such failure. The owners of Lots 2 and/or 3 (as applicable) shall be liable for the cost of any maintenance so performed by the CITY ("City Maintenance Costs") and shall reimburse the CITY for such costs, with interest at statutory pre-judgment rate calculated from the date of expenditure. Upon recordation by the City of a claim for reimbursement, the City shall have a foreclosable lien upon the owner's property to secure reimbursement.
- (iv) In addition to the remedies provided for above, upon failure of the owners of Lots 2 and/or 3 (as applicable) to maintain the Cross-Access Road (after notice), the CITY shall be entitled to all remedies at law or equity to enforce the Amended Cross-Access Easement, including but not limited to all remedies for the abatement of a nuisance, which remedies shall be cumulative and not exclusive. If a judgment is entered against the owners of Lots 2 and/or 3 (as applicable), said owner(s) shall pay all reasonable attorney's fees and costs of the CITY (including in-house counsel). The CITY shall not be liable to the owners of Lots 2 and 3 or any party claiming through them, for any damage caused by the CITY in the performance of any maintenance undertaken pursuant to the Amended Cross-Access Easement unless such damage is caused by wanton or willful conduct. Failure to enforce a right granted under the Amended Cross-Access Easement shall not be deemed a waiver of such right or any other rights thereunder. No Party shall be liable for the failure to enforce the provisions of the Amended Cross-Access Easement.
- (v) The provisions of the Cross-Access Easement shall inure to and be binding upon the owners of Lot 2 and Lot 3 and their respective assigns, transferees, heirs, and grantees.

16.3 Easements Reserved on the Linear Park

The Plat of Dedication for the Linear Park shall reserve twenty foot (20') nonexclusive easements for all current utilities and cable providers on the Linear Park in addition to twenty foot (20') exclusive perimeter easements on the Linear Park to the CITY and its designees. The language of such easements shall be approved by the City Attorney.

17. Building Permits. Building permits for the development of the SUBJECT PROPERTY shall not be issued by the CITY until after: (i) the first final plat of subdivision for Naper Commons has been recorded with the Office of the DuPage County Recorder; and (ii) the City Engineer has

determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

18. Financial Surety. The OWNER AND DEVELOPER shall submit a surety to the CITY in a form and from a source acceptable to the City Attorney, and in an amount approved by the City Engineer based upon 110% of the approved engineer's cost estimate to guarantee the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("**Public Improvements**") as well as the Buffer improvements described in Sections 7 and 8 above, including but not limited to the installation of native grass mix and/or landscaping (as applicable) and the split-rail fences, in accordance with the Naperville Municipal Code then in effect.

The financial surety described above shall be received and approved prior to issuance of a site development permit for the SUBJECT PROPERTY. 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 and from a source 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.

19. General Conditions.

19.1 **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 and any successor, assign, or transferee.

19.2 **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.

19.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be amended or modified only through the written mutual consent of the CITY and the OWNER AND DEVELOPER of the SUBJECT PROPERTY to which such amendments or modifications are applicable.

19.4 **Assignment.** This Agreement may not be assigned by the OWNER AND DEVELOPER without the prior written consent of the CITY.

19.5 **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.

19.6 **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.

19.7 **Recordation.** This Agreement will be recorded with the Office of the DuPage County Recorder.

19.8 **Term.** This Agreement shall be from the Effective Date defined herein and shall terminate, subject to the survival provisions set forth in 19.13 below upon the later of fifteen (15) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.

19.9 **Exhibits.** All exhibits hereto shall be deemed incorporated herein in their entirety.

19.10. **Survival.** The following provisions of this Agreement shall survive its expiration: Section 1-9 (and any subparts thereof), Sections 11-18 (and any subparts thereof) and Subsections 19.1, 19.2, 19.3, 19.5, 19.6, 19.9. and 19.10.

19.11 **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.

19.12 **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.

19.13 **Effective Date.** This Agreement shall be effective when it has been fully executed by the Parties hereto and has been recorded with the Office of the DuPage County Recorder (herein referred to as "**Effective Date**").

/ SIGNATURES ON FOLLOWING PAGES /

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____

LEGAL DESCRIPTION

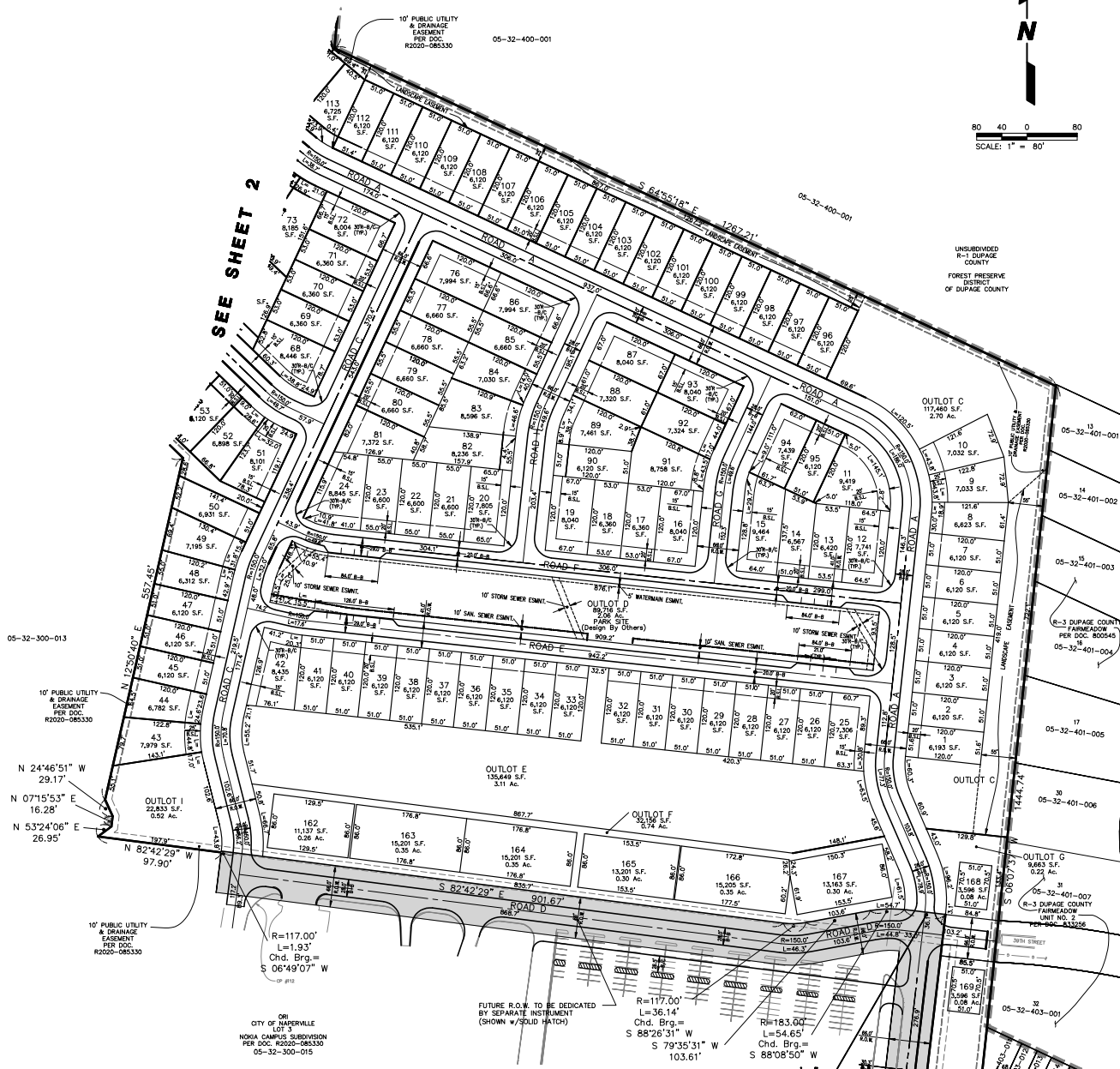
LOT 4 IN NOKIA CAMPUS SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH 1/2 OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 10 EAST AND THE SOUTH HALF OF SECTION 32, TOWNSHIP 39 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 6, 2020 AS DOCUMENT R2020-085330, IN DUPAGE COUNTY, ILLINOIS.

PINs: 05-32-300-014
08-05-207-036

ADDRESS: Part of the 1960-2000 Lucent Lane, Nokia Campus, Naperville, Illinois



80 40 0 80
SCALE: 1" = 80'

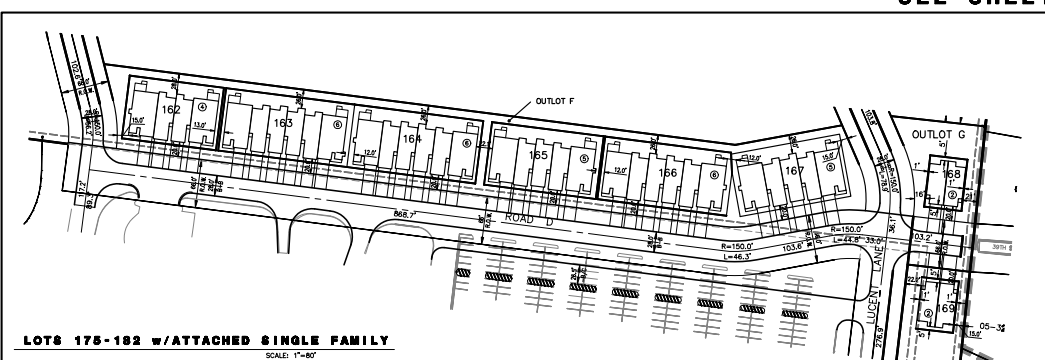


05-32-300-013
10' PUBLIC UTILITY & DRAINAGE EASEMENT PER DOC. R2020-085330
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N 07°15'53" E 16.28'
N 53°24'06" E 26.95'
N 82°42'29" W 97.90'

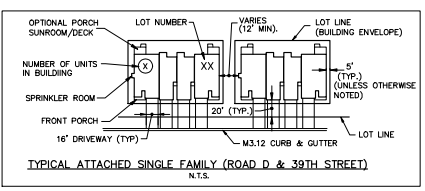
10' PUBLIC UTILITY & DRAINAGE EASEMENT PER DOC. R2020-085330
R=117.00'
L=1.93'
Chd. Brg. = S 06°49'07" W

FUTURE R.O.W. TO BE DEDICATED BY SEPARATE INSTRUMENT (SHOWN w/SOLID HATCH)
R=117.00'
L=36.14'
Chd. Brg. = S 88°26'31" W
R=183.00'
L=54.65'
Chd. Brg. = S 68°08'50" W
103.61'

SEE SHEET 4



LOTS 175-182 w/ATTACHED SINGLE FAMILY
SCALE: 1"=80'

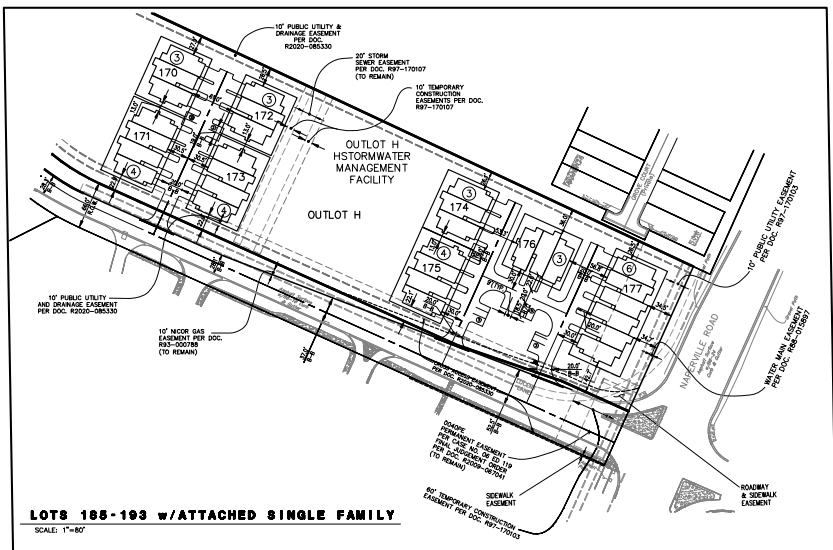
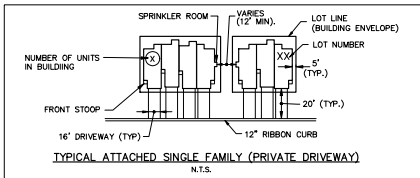
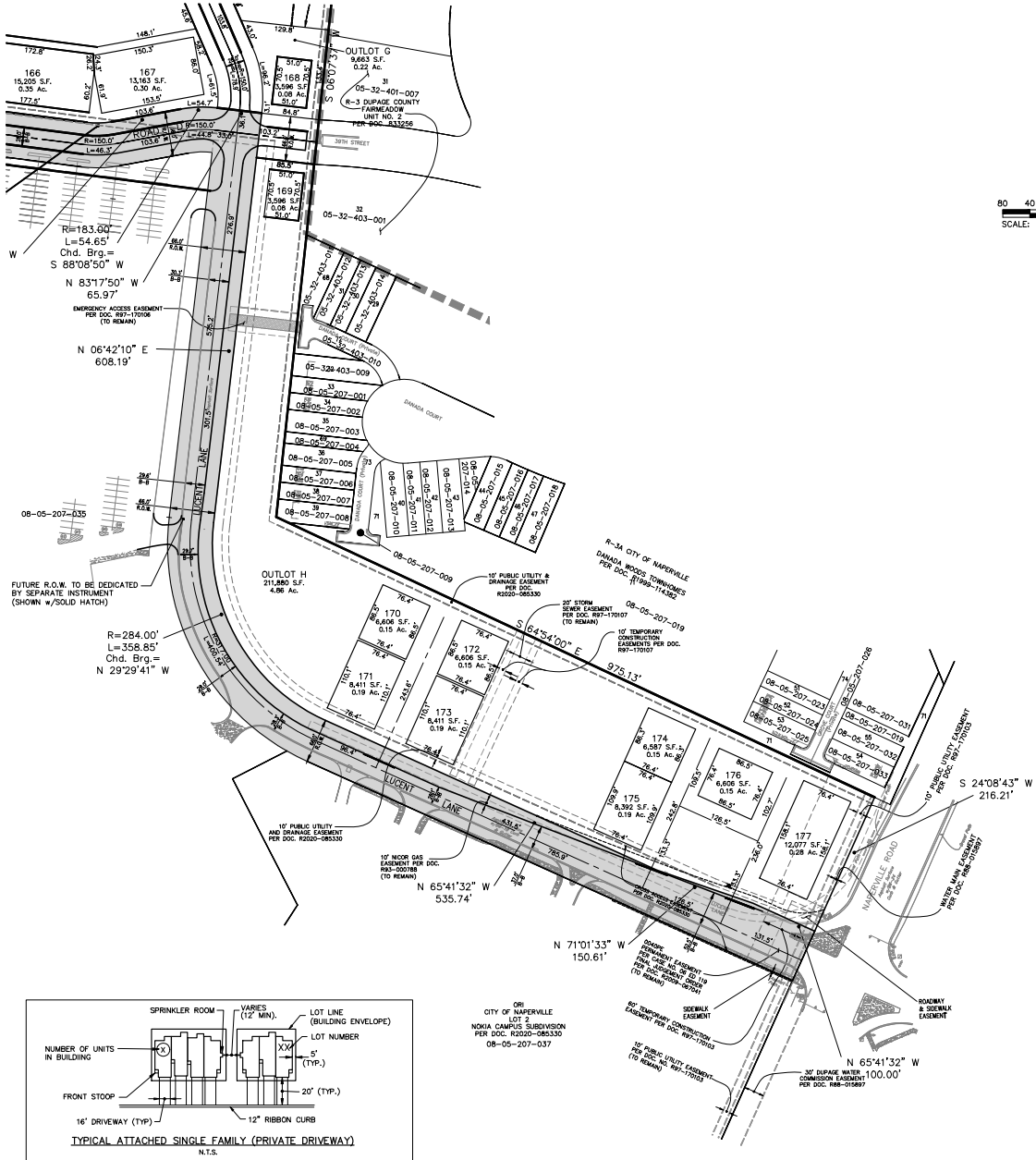


PREPARED FOR:
PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
EXHIBIT B 230-5400

PREPARED BY:
CEMCON, Ltd.
Consulting Engineers, Land Surveyors & Planners
2280 White Oak Circle, Suite 100
Aurora, Illinois 60502-9875
PH: 630.862.2100 FAX: 630.862.2199
E-Mail: info@cemcon.com Website: www.cemcon.com
DISC NO.: 402138 FILE NAME: PREDEV
DRAWN BY: LAL FLD. BK. / PLO. NO.: NOTES
COMPLETION DATE: 09-14-20 JOB NO.: 402138
XREF : TOPO PROJECT MANAGER : CRM
10-16-20/AAL REVISED PER 2020-10-09 CITY COMMENTS
01-20-21/AAL REVISED PER PLAN COMMISSION MEETING 12/16
02-01-21/AAL REVISED PER 2021-01-29 CITY COMMENTS
02-19-21/AAL REVISED PER PLAN COMMISSION MEETING 2/6
03-16-21/AAL REVISED PER 2021-03-11 CITY COMMENTS
04-08-21/AAL REVISED PER 2021-04-28 CITY COMMENTS
PRELIMINARY PLAN OF SUBDIVISION FOR MAPER COMMONS
CITY OF NAPERVILLE PROJECT NO.: 20-1000088
SHEET 3 OF 4
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DATE THE COVER SHEET WAS PREPARED BY: CEMCON, LTD.

SEE SHEET 3



LOTS 185-193 w/ATTACHED SINGLE FAMILY
SCALE: 1"=80'

PREPARED FOR:
PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
EXHIBIT B 230-5400

PREPARED BY:
CEMCON, Ltd.
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PH: 630.862.2100 FAX: 630.862.2199
E-Mail: info@cemcon.com Website: www.cemcon.com

DISC NO.: 402138 FILE NAME: PREOVR
DRAWN BY: LAL FLD. BK. / PG. NO.: NOTES
COMPLETION DATE: 09-14-20 JOB NO.: 402138
XREF.: TOPO PROJECT MANAGER: CRM
10-16-20/LAL: REVISED PER 2020-10-05 CITY COMMENTS
11-18-20/LAL: REVISED PER 2020-11-03 CITY COMMENTS
01-20-21/LAL: REVISED PER PLAN COMMISSION MEETING 12/16
02-01-21/LAL: REVISED PER 2021-01-29 CITY COMMENTS
02-19-21/LAL: REVISED PER PLAN COMMISSION MEETING 2/6
04-08-21/LAL: REVISED PER 2021-04-08 CITY COMMENTS

PRELIMINARY PLAN of SUBDIVISION FOR PAPER COMMONS
CITY OF NAPERVILLE PROJECT NO. 20-1000008
SHEET 4 OF 4
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April 7, 2021

Erin Venard
Project Manager – DRT, Transportation Engineering Development (T.E.D.)
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

Re: Naper Commons Development

Dear Erin,

Naperville Park District staff recently discussed the most recent version of the park donation area depicted in Exhibit 1 with the team representing Pulte Homes. Please note that the Park District concurs in the concept park design concerning its size and character. However, the Park District expressed concern about the specific amenities listed as being present within the park concept and has, for example, requested removal of the pickleball court and “string lights” called out in Exhibit 1 since these features are not recommended for Neighborhood Parks (i.e., those parks that are in close proximity to residential properties) as per the Park District’s Master Plan.

Further, please be advised that Pulte Homes and the Naperville Park District are drafting a Development Agreement for this Park. The Development Agreement will identify the process of Pulte Homes and the Park District finalizing the site plan including the layout of pathways, hardscapes, plaza areas, and site furnishings as well as confirm park design details and specifications, and the values of the same. Pulte Homes will grade the entire park donation area and construct the hardscape and landscape improvements in the “Pulte Homes Park Development Area” depicted in Exhibit 1. The Park District will construct the park improvements in the center portion of the site identified as the “Naperville Park District Park Development Area” in Exhibit 1.

I hope this information is helpful. Please do not hesitate to contact me if there are any questions.

Sincerely,

Eric Shutes
Director of Planning
Naperville Park District

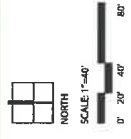
cc: Ray McGury, Naperville Park District, Executive Director
Derke Price, Naperville Park District, Attorney
Pat Lord, City of Naperville, Attorney
Russell Whitaker, III, Rosanova & Whitaker, Ltd., Attorney

EXHIBIT 1



EXHIBIT C

PREPARED BY
Pulte Group, Inc.



ISSUE DATE: January 14, 2021
PROJECT NAME: Napier Commons
PROJECT NUMBER: 2019-00000000000000000000

Linear Park
Napier Commons
Naperville, Illinois

