

ADDRESS:

1720 QUINCY AVENUE
NAPERVILLE, IL 60540

P.I.N.: 07-15-403-003

RETURN TO:

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

**AGREEMENT TO RELEASE A COVENANT
AND TO IMPOSE A REPLACEMENT COVENANT**

[1720 Quincy Avenue, Naperville, IL]

Now comes the City of Naperville, a municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois, with offices located at 400 South Eagle Street, Naperville, IL 60540; Roy E. Spencer, President and Secretary of Perma-Seal Basement Systems, Inc., with offices located at 412 Rockwell Ct., Burr Ridge, IL 60527, and 513 Rogers St., Downers Grove, IL 60515; and Laura A. Spencer as Manager of 1720 Quincy Property, LLC, an Illinois limited liability company, and hereby enter into this Agreement to Release a Covenant and to Impose a Replacement Covenant (hereinafter "**Agreement**"). The foregoing are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

RECITALS

- A. WHEREAS, a certain Assignment and Covenant Agreement was entered into by and between the City of Naperville, Roy E. Spencer, President and Secretary of Perma-Seal Basement Systems, Inc., and 1720 Quincy Property, LLC which was recorded with the DuPage County Recorder as Document No. R2016-108072 ("**Covenant Agreement**"); and
- B. WHEREAS, said Covenant Agreement pertains to property located at 1720 Quincy Avenue, Naperville, IL 60540, P.I.N.: 07-15-403-003, which is legally described below ("**Subject Property**").

LOT 4 IN BURLINGTON NORTHERN NAPERVILLE INDUSTRIAL PARK UNIT 1, BEING A SUBDIVISION OF PART OF SECTIONS 14 AND 15, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 5, 1986 AS DOCUMENT NUMBER R86-154386

- C. WHEREAS, the owner of the Subject Property is 1720 Quincy Property, LLC, a limited liability company which ownership is subject to a Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (R2016-108074) in favor of the Lender therein described as Roy E. Spencer, having an address of 513 Rogers St., Downers Grove, IL 60515.
- D. WHEREAS, the Parties desire to release the covenant set forth in said Covenant Agreement and replace the covenants contained therein with the Replacement Covenant described herein which Replacement Covenant shall attach to the Subject Property and run with the land.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, it is hereby agreed by and between the Parties hereto as follows:

1. Release of Covenant. The covenant set forth in Recital E of the Covenant Agreement recorded with the DuPage County Recorder as Document No. R2016-108072 which requires that “1720 Quincy Property, LLC and any successor, transferee or assignee of 1720 Quincy Property, LLC are bound by the Quincy Property Terms and Conditions of Acquisition” (as “Quincy Property Terms and Conditions of Acquisition” is defined in Recital B of said Covenant Agreement) is hereby revoked and shall have no further force or effect subject to replacement thereof with the Replacement Covenant described in paragraph 2 below. The assignment of rights set forth in Recital D of the Covenant Agreement shall remain in full force and effect.
2. Replacement Covenant. A covenant in replacement of the Covenant Agreement (herein “**Replacement Covenant**”) is hereby placed on the Subject Property which shall constitute a covenant running with the land and shall be binding upon the Parties hereto and their lessees, successors in interest, heirs, executors, transferees, and assignees as follows:

At no time shall the Subject Property, or any part thereof, be leased, rented, or otherwise used for any purpose which constitutes an exempt property use under the Property Tax Code of the State of Illinois, 35 ILCS 200/1-1 et seq.

3. Amendment or Revocation of the Replacement Covenant. The Replacement Covenant may be amended by agreement of the owner of the Subject Property and the City of Naperville; agreement by the City of Naperville must be evidenced by a resolution or ordinance providing therefor.

4. General Provisions.
 - 4.1 The Recitals set forth above are material terms of this Agreement and are incorporated herein in their entirety in this Subsection 4.1 by reference.

 - 4.2 The Parties hereto expressly agree that all of their intentions and agreements as set forth or referenced in this Agreement shall be covenants running with the land and be binding upon each of the Parties hereto and their successors, transferees, heirs, and assigns.

 - 4.3 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.

 - 4.4 If the City prevails in any action brought pursuant to this Agreement, the party against whom such action was brought shall reimburse the City for its attorneys' fees, whether in-house or outside counsel, and costs within thirty (30) days of receipt of a bill therefor.

 - 4.5 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.

 - 4.6 This Agreement shall be recorded with the DuPage County Recorder.

 - 4.7 The undersigned warrant and represent that have read and understand this Agreement and that they are authorized to execute this Agreement.

/SIGNATURES ON FOLLOWING PAGES/

ROY E. SPENCER

Roy E. Spencer

Date: 10/28/21

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Roy E. Spencer, personally known to me, this 27th day of October, 2021.

Rosie D. Dunn

Notary Public

ROSIE D DUNN

Print Name



-seal-

Laura A Spencer as Manager of 1720 Quincy Property, LLC

By: Laura Ann Spencer

Date: 10/28/21

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Laura Ann Spencer personally known to me, this 29th day of October, 2021.

Rosie D Dunn
Notary Public

ROSIE D DUNN
Print Name



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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, and Pam Gallahue, City Clerk, of the City of Naperville, personally known to me, this _____ day of _____, 2021.

Notary Public

Print Name

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