

GRANTOR:

Little Friends, Inc.
140 N. Wright St.
Naperville, IL 60540

GRANTEE:

City of Naperville
400 S. Eagle St.
Naperville, IL 60540

PROPERTY ADDRESS:

126, 140, 148 N. Wright Street
and 619 E. Franklin Avenue
Naperville, IL 60540

P.I.N.s:

08-18-309-002
08-18-422-001

RETURN TO:

Attn: City Clerk’s Office
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

INSTRUMENT PREPARED BY:

Michael W. DiSanto, City Attorney
City of Naperville
400 S. Eagle St., Naperville, IL 60540

(for Recorder’s use only)

**PROPERTY COVENANT INCENTIVE AGREEMENT
TO PROTECT AND PRESERVE THE KROEHLER MANSION
BETWEEN THE CITY OF NAPERVILLE AND LITTLE FRIENDS**

This **PROPERTY COVENANT INCENTIVE AGREEMENT** (this “**Agreement**”) is entered into as of the ____ day of _____, 2020 (“**Effective Date**”), by and between 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 (the “**City**”) and **LITTLE FRIENDS, INC.** an Illinois-based charitable organization with offices located at 140 N. Wright St., Naperville, IL 60540 (“**Little Friends**”). The City and Little Friends are hereinafter individually sometimes interchangeable referred to as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. **WHEREAS**, the City, DuPage and Will Counties, of the State of Illinois is an Illinois municipal corporation and home rule unit of government under the laws and Constitution of the State of Illinois; and
- B. **WHEREAS**, Little Friends is an Illinois-based charitable organization dedicated to education, treatment, housing and growth for those with intellectual/developmental disabilities and autism; and
- C. **WHEREAS**, Little Friends owns the 3.79-acre property located at 126, 140, 148 N. Wright Street and 619 E. Franklin Avenue in Naperville (the “**Property**”). The Property is comprised of two parcels which are zoned R2 with a conditional use. The Administration Building (built in 1956) is located on Parcel 1. The Kroehler Mansion (built in 1908), the Krejci Academy and the Gymnasium (both built in 1948), are located on Parcel 2. A map depicting the Property is attached as **Exhibit A**. The Property is located within the Historic District of the City of Naperville; and
- D. **WHEREAS**, For the past 44 years Little Friends has operated the Property as a not-for-profit teaching and educational facility for students and adults with autism and other intellectual/developmental disabilities. The school is not self-sustaining and the ability for Little Friends to continue to provide services to those with disabilities has always been reliant upon very substantial fundraising, charitable gifts and donations; and
- E. **WHEREAS**, Little Friends needs to relocate the teaching and educational programs to a new site in order to provide improved and more conveniently accessed services to the individuals it serves. To accomplish this relocation, Little Friends intends to demolish all buildings on the Property and sell the Property for residential development; and
- F. **WHEREAS**, Little Friends contends that the demolition of all the buildings on the Property is necessary to maximize the sale value of the Property, which Little Friends needs to purchase the new site and facilities. Without the funds generated from the sale of the Property the relocation is not economically viable; and
- G. **WHEREAS**, the Kroehler Mansion is located on Parcel 2 of the Property, at 126 N. Wright Street, Naperville, Illinois 60540 (“**Mansion**”). The City has found that the Mansion has important historical significance and is worthy of preservation in that it was designed and constructed for Peter Kroehler (a local and national figure of historical prominence) and his wife Josephine in 1908. Kroehler was a graduate of North-Western College (now North Central College) and became a partner and later president of the Lounge Company, which became the Kroehler Manufacturing Company, the world’s largest furniture manufacturer and a U.S. Armed Forces military contractor during WWII. Kroehler Manufacturing Company was a major employer in Naperville for decades; by WWI the company was the City’s largest employer with about 500 workers. In addition to his furniture business

ventures, Kroehler also served as a two-term mayor of the City of Naperville. A community philanthropist, Kroehler was one of the original founders of Naperville's YMCA; and

- H. **WHEREAS**, Little Friends has represented that it believes it will make significantly more money on the sale of the Property if the Mansion is demolished; and
- I. **WHEREAS**, property owners who seek to alter, construct, demolish, or make a material change to landmark properties, or to properties located within the City Historic District, are required to obtain a certificate of appropriateness. On October 24, 2019, the City's Historic Preservation Commission granted a partial approval of COA #19-2840, approving demolition of the following buildings on the Property: the Krejci Academy, the Gymnasium, and the Administration Building, while denying demolition of the Mansion. On November 19, 2019, the Naperville City Council ("**Council**") approved COA #19-2840, also allowing the demolition of the Mansion. COA #19-2840 now authorizes the demolition of all currently existing structures on the Property ("**COA**"); and
- J. **WHEREAS**, the City currently receives no property tax revenues from Little Friends' non-profit use of the Property and it is estimated that the anticipated residential development of the Property will result in the City receiving approximately \$562,000 in property tax revenues over 20 years once the Property is fully developed; and
- K. **WHEREAS**, on December 3, 2019, the Council, adopted Resolution No. 19-47 that established support for a future incentive agreement between the City and Little Friends whereby the City would tender certain funds to Little Friends in exchange for Little Friends recording a covenant on the Property, which covenant shall run with the land, pertaining to the Kroehler Mansion, including but not limited to a provision prohibiting the demolition of the Mansion ("**Covenant**"); and
- L. **WHEREAS**, Little Friends has received purchase offers for the Property that include the Mansion remaining preserved and the Mansion being demolished, and Little Friends is willing to record the Covenant on the Property if the City provides an incentive to offset the loss in the value of the Property if the Mansion is preserved; and
- M. **WHEREAS**, the City of Naperville, DuPage and Will Counties, of the State of Illinois is a duly constituted home rule municipality in accordance with Article VI of the Constitution of the State of Illinois of 1970 and as a home rule unit of government may according to the Illinois Constitution "exercise any power and perform any function pertaining to its government and affairs"; and
- N. **WHEREAS**, the City of Naperville is entering into this Agreement pursuant to its authority as a home rule unit; and

- O. **WHEREAS**, the City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to use its credit, revenues, and other resources to pay costs and service debt related to activities which involve a public purpose; and
- P. **WHEREAS**, the Council, in exercise of the City's home rule authority, finds that it is in the public interest to secure the preservation of the historically significant Mansion by offering an incentive to preserve the Mansion in exchange for Little Friends recording the Covenant running with the land to the effect of prohibiting the demolition of the Mansion and providing that any amendment or release of the covenant shall require City Council approval.

NOW THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above are expressly incorporated into this Agreement by this reference thereto as if fully set forth in this Section 1.
2. **Forfeit of COA as to the Mansion**. Upon recordation of this Agreement and the Covenant referenced in paragraph 3 below which Covenant is part of this Agreement, Little Friends voluntarily forfeits, surrenders, and waives the COA, and all rights thereunder, as it pertains to authorizing the demolition of the Mansion, and the City hereby revokes the COA as it pertains to authorizing demolition of the Mansion. Nothing herein affects or revokes Little Friends' rights under the COA to demolish the following buildings on the Property: the Krejci Academy, the Gymnasium, and the Administration Building. Any demolition of the buildings connected to or adjacent to the Mansion shall comply with the provisions set forth in paragraph 4 of the Covenant. Any other demolition of all or part of the Mansion or relocation of the Mansion shall comply with the provisions set forth in paragraph 5 of the Covenant.
3. **Covenant**. A Covenant, in the form set forth on **Exhibit B** attached hereto and made part hereof, shall be executed by a duly authorized representative of Little Friends and recorded, simultaneously with this Agreement, with the Office of the DuPage County Recorder.
4. **Incentive Amount**. The City agrees to remit to Little Friends four hundred fifty thousand dollars (\$450,000.00) (the "**Incentive Amount**") within thirty (30) days of Little Friends providing the City notice that Little Friends has recorded this Agreement and the Covenant on the Property with the Office of the DuPage County Recorder in compliance with the terms and conditions set forth in this Agreement.

5. **Termination.** The obligation of the City to pay the Incentive Amount to Little Friends shall automatically terminate upon any of the following occurrences:
- a. The Mansion is demolished in part or in whole, or relocated to any location not on the Property, prior to the City tendering the Incentive Amount to Little Friends.
 - b. The Mansion is demolished in part or in whole, or relocated to any location not on the Property, prior to Little Friends recording this Agreement and the Covenant on the Property with the Office of the DuPage County Recorder.
 - c. Little Friends has not recorded this Agreement and the Covenant on the Property with the Office of the DuPage County Recorder on or before September 1, 2021 or such other date as may be mutually agreed upon in writing by Little Friends and the City's City Manager or his or her designee.
 - d. Prior to recording this Agreement and the Covenant with the Office of the DuPage County Recorder, Little Friends: (1) conveys any fee-simple ownership interest in any portion of the Property to any third-party; or (2) assigns, transfers, or enters into any agreement with any third-party with respect to any fee-simple ownership interest of the Property or any ownership interest in the Property that gives such party legal rights in the Property that would result in such third-party having standing to object to or rights that impact may impact the recording or the enforcement of the Covenant.
6. **Mutual Assistance.** The Parties agree to do all things necessary or appropriate to carry out, and to aid and assist each other in carrying out, the terms of this Agreement and in implementing the Parties' intent, as reflected by the terms of this Agreement, including, without limitation, the giving of such notices, the holding of necessary public meetings, the enactment by the City of such resolutions and ordinances and the taking of such actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and provisions of this Agreement and the Parties' intentions as reflected by the terms of this Agreement. No waiver of City regulations shall be inferred from this Agreement, except as specifically set forth herein.
7. **Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three (3) days after mailing.

All notices to the City shall be sent to:

City of Naperville
400 South Eagle Street
Naperville, IL 60540
Attn: City Manager

With copy to:

City of Naperville
400 South Eagle Street
Naperville, IL. 60540
Attn: City Attorney

All notices to Little Friends shall be sent to:

Little Friends, Inc.
140 N. Wright St.
Naperville, IL 60540
Attn: President & CEO

Either Party may notify the other of a change in the name of the individual and/or the address upon which notice is to be served by sending notification of such change by certified mail to the other Party.

8. **Default/Remedies.** The failure of a Party to materially comply with its obligations under this Agreement shall constitute a default by such Party. The Party claiming the occurrence of such default shall notify the other Party of same specifying the nature of the default and shall demand performance by the defaulting Party within thirty (30) day of the date of the notice specifying such default. If such default is not cured within said time, the Party claiming the default may pursue all remedies available at law and equity, including specific performance.
 - a. In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged breach, default or misrepresentation, the successful or prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees (whether in-house or outside counsel) and related costs (including any fees and costs incident to appeals) in addition to any other relief hereunder to which such Party may be entitled.
9. **Governing 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.

10. **Integration.** This Agreement and the Covenant contain the entire agreement of the Parties with respect to the transactions contemplated by this Agreement. All prior agreements, negotiations, and understandings are expressly merged herein and superseded hereby.
11. **Severability.** Each section of this Agreement, and each sentence, clause or phrase contained in such section, shall be considered severable and if, for any reason, any section, or any sentence, clause or phrase contained in such section, is determined to be invalid or unenforceable, such invalidity or unenforceability shall not impair the operation or affect enforceability or validity of the remaining portions of this Agreement.
12. **Amendment.** This Agreement may be amended by, and only by, a written instrument authorized in accordance with law and signed by both Parties.
13. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon: (i) the City and any successor corporate authorities of the City; and (ii) Little Friends and this Agreement may not be assigned by Little Friends to any grantee, lessee, assign or other third party.
14. **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Electronically transmitted signatures on this Agreement shall constitute originals signatures of the Parties.
15. **Construction.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. 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.
16. **Time is of the Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Effective Date.

[SIGNATURE PAGES FOLLOW]

LITTLE FRIENDS, INC.,

An Illinois corporation

By: [Signature]

Name: MIKEL S. BRIGGS

Its: PRESIDENT/CEO

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by mikel Briggs, this 11 day of Aug., 2020

[Signature]
Notary Public

Colleen C. Clark
Print Name

Given under my hand and official seal this 11 day of August, 2020.



Seal

[Signature]
Notary Public

My Commission Expires: 6/18/24

Colleen C. Clark

Print Name

CITY OF NAPERVILLE,

an Illinois municipal corporation and home rule unit of local government

By: _____
Douglas A. Krieger

Its: City Manager

ATTEST

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

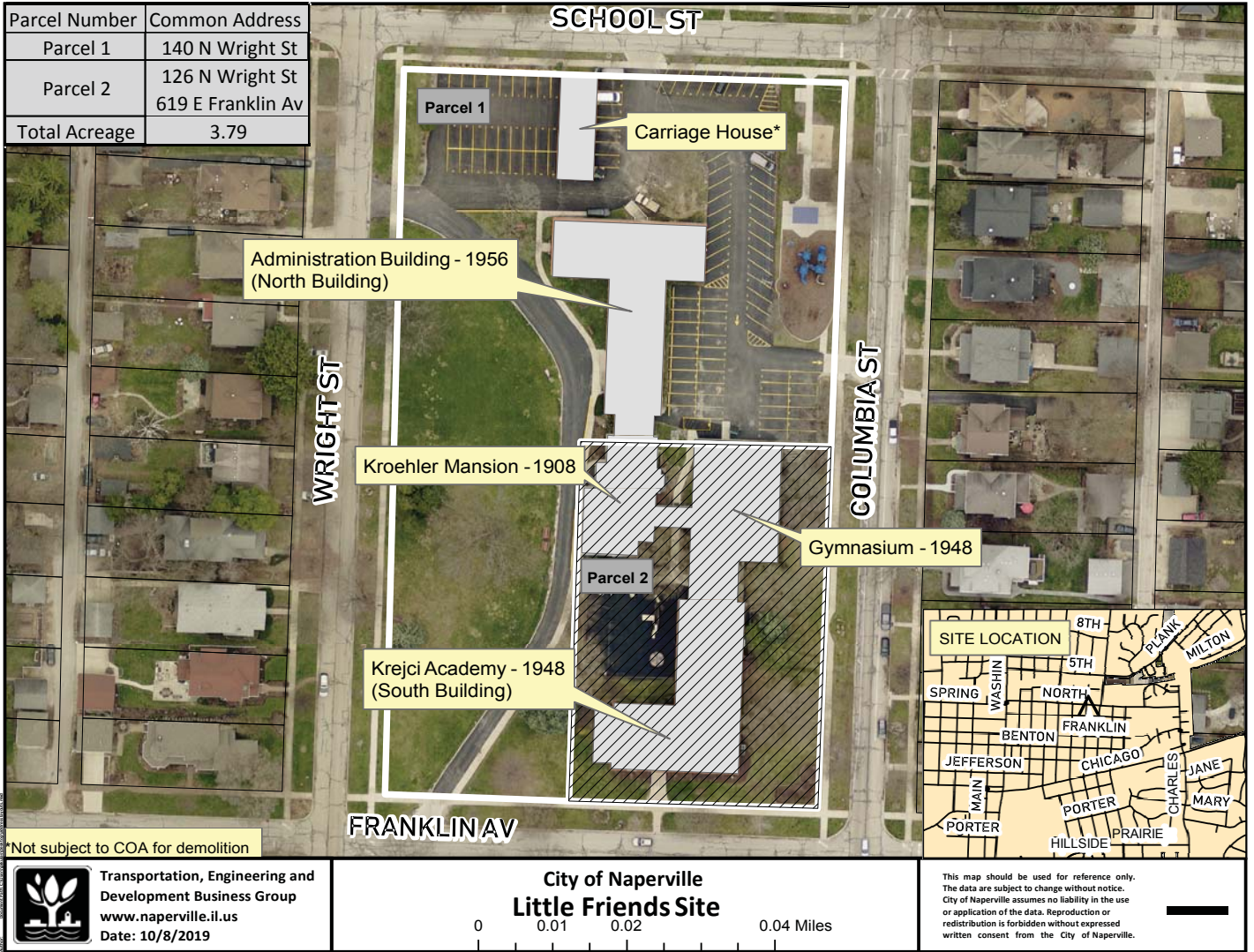
Date: _____

Incentive Agreement

EXHIBIT A

Little Friends Property Map

Parcel Number	Common Address
Parcel 1	140 N Wright St
Parcel 2	126 N Wright St 619 E Franklin Av
Total Acreage	3.79



Not subject to COA for demolition



Transportation, Engineering and
Development Business Group
www.naperville.il.us
Date: 10/8/2019

City of Naperville Little Friends Site

0 0.01 0.02 0.04 Miles

This map should be used for reference only. The data are subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.

Incentive Agreement
EXHIBIT B

GRANTOR:

Little Friends, Inc.
140 N. Wright St.
Naperville, IL 60540

GRANTEE:

City of Naperville
400 S. Eagle St.
Naperville, IL 60540

PROPERTY ADDRESS:

126, 140, 148 N. Wright Street and
619 E. Franklin Avenue
Naperville, IL 60540

P.I.N.s:

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RETURN TO:

Attn: City Clerk's Office
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400 S. Eagle St.
Naperville, IL 60540

(for Recorder's use only)

INSTRUMENT PREPARED BY:

Michael W. DiSanto, City Attorney
City of Naperville
400 S. Eagle St., Naperville, IL 60540

COVENANT RUNNING WITH THE LAND

PROPERTY TO WHICH THIS COVENANT APPLIES:

126, 140, 148 N. Wright Street
and 619 E. Franklin Avenue,
Naperville, IL 60540

P.I.N.s:

08-18-309-002
08-18-422-001

Legally described on Exhibit A
attached hereto and made part hereof

The above described property (“**Property**”) is hereby subject to the conditions set forth in this Covenant. This Covenant constitutes a covenant running with the land, voluntarily imposed and recorded upon and against the Property by the Property owner in exchange for payment from the City of Naperville (“**City**”) of four hundred fifty thousand dollars (\$450,000.00). Said Covenant shall be binding upon the Property owner and its lessees, successors in interest, heirs, executors, transferees, and assignees, including, but not limited to any and all future owners of the Property, subject to amendment of the Covenant as set forth in paragraph 6 hereof:

1. Except as otherwise specifically provided by this Covenant, the Kroehler mansion (“**Kroehler Mansion**” or “**Mansion**”) located at 126 N. Wright Street, Naperville, Illinois 60540 is subject to all protections and restrictions applicable to a structure existing in the City’s Historic Preservation District; and
2. The Kroehler Mansion must remain protected and preserved and shall not be demolished nor relocated to any location not on the Property; and
3. Any changes or alterations to the Kroehler Mansion, other than demolition, which is prohibited, shall remain subject to the requirements set forth in the Naperville Municipal Code, as amended from time to time, for obtaining a certificate of appropriateness (“**COA**”) in order to proceed with such changes or alterations except as set forth in paragraph 4 below; and
4. Prior to demolition of structures attached to or adjacent to the Kroehler Mansion, the Property owner, or its designee, shall create a preservation plan (“**Preservation Plan**”), with the advice of individuals having appropriate expertise, in order to ensure that (i) the structural integrity and aesthetics of the Kroehler Mansion will not be adversely affected by such demolition; and (ii) alterations made to the side facades of the Mansion (and the rear façade of the Mansion, if applicable), affected by the demolition of the attached or adjacent buildings are accomplished in a manner such that the appearance of the Mansion is not negatively affected. The proposed Preservation Plan shall be reviewed and approved by the Zoning Administrator of the City (“**Zoning Administrator**”). The approved Preservation Plan shall be strictly complied with unless a revision is approved in writing by the Zoning Administrator. The Zoning Administrator may administratively approve a COA for any alterations to the side or rear facades of the Kroehler Mansion resulting from demolition of structures attached or adjacent to the Kroehler Mansion. Any denial of approval of a requested COA for alterations to the side or rear facades of the Kroehler Mansion resulting from demolition of structures attached or adjacent to the Kroehler Mansion may be processed as set forth in the Naperville Municipal Code, as amended from time to time; and
5. Any request for relocation of the Mansion shall be subject to the COA process set forth in the Naperville Municipal Code, as amended from time to time. Unless specifically permitted through a COA issued by the City, any demolition of all or part of the Kroehler Mansion or any relocation of the Mansion shall require the owner of the Kroehler Mansion at the time of said demolition or relocation to pay to the City four hundred fifty thousand dollars (\$450,000.00) within thirty (30) days’ notice from the City, and the City is granted

a right to record a lien against the Property in said amount until such amount is paid in full to the City. Notwithstanding the foregoing, if an unpermitted de minimis change to the Kroehler Mansion which falls within the definition of “demolition” as set forth in the Naperville Municipal Code occurs, as determined by the Zoning Administrator in his or her sole discretion, the owner of the Kroehler Mansion will be given thirty (30) days upon notice from the City to cure said de minimis demolition (“**Cure Period**”). If, within the Cure Period, the demolition is not timely cured, or otherwise addressed in a manner deemed appropriate by the Zoning Administrator in his or her sole discretion, the owner of the Kroehler Mansion shall pay to the City four hundred fifty thousand dollars (\$450,000.00) within thirty (30) days’ notice from the City and the City is granted a right to record a lien against the Property in said amount until such amount is paid in full to the City. Additionally, the City shall be entitled to pursue all other remedies available at law and equity including, but not limited to, the issuance of ordinance violations, assessment of compensatory and punitive damages, specific performance, issuance of injunctive relief, and reimbursement of costs incurred (including attorney’s fees) to enforce this Covenant or an amended Covenant as provided for in paragraph 6 below; and

6. This Covenant shall be recorded against the entire Property prior to payment of an agreed upon incentive by the City to Little Friends, Inc. pursuant to a separate, recorded, Incentive Agreement which represents the consideration for this Covenant. If the Property is subdivided, this Covenant shall be amended by the authority of the City Manager of the City (“**City Manager**”) to apply solely to that portion of the Property upon which the Kroehler Mansion is located. Upon recordation of the amended Covenant as set forth above, a release of this Covenant shall be prepared and executed by the authority of the City Manager and recorded by the Property owner against the remaining lots of the Property; and
7. The undersigned representative of Little Friends, Inc. represents and warrants that as of the date of execution of this Covenant and recording thereof with the Office of the DuPage County Recorder, Little Friends, Inc. is the sole owner of the Property, and that he has the authority to execute this Covenant on behalf of Little Friends, Inc.; and
8. Venue for any action arising out of the terms or conditions of this Covenant shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

IN WITNESS WHEREOF, the duly authorized representative of Little Friends, Inc., owner of the Property to which this Covenant shall attach, has executed this Covenant as of the date set forth below his signature, to be effective as of the recording of this Covenant with the Office of the DuPage County Recorder.

[SIGNATURE PAGE FOLLOWS]

**Covenant
EXHIBIT A**

Legal Description

Block 2 in Kroehler's Addition to Naperville, in Section 18, Township 38 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded May 14, 1906, as Document 87553, in DuPage County, Illinois.

Also Described As

Block 2 (except the South 260.10 feet of the East 187.00 feet as measured on the East and South lines) in Kroehler's Addition to Naperville, in Section 18, Township 38 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded May 14, 1906, as Document 87553, in DuPage County, Illinois.

The South 260.10 feet of the East 187.00 feet as measured on the East and South lines, of Block 2 in Kroehler's Addition to Naperville being a Subdivision in Section 18, Township 38 North, Range 10, East of the Third Principal Meridian in DuPage County, Illinois. According to the Plat thereof recorded May 14, 1906, as Document 87553 in DuPage County, Illinois.

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For clarification, the Property consists of the entire block of property bordered by North Wright Street, School Street, North Columbia Street, and East Franklin Avenue.