

PROPERTY ADDRESS:
424 E. CHICAGO AVENUE
NAPERVILLE, IL 60540

P.I.N.
08-18-328-021

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

**FIRST AEMDNMENT TO THE OWNER'S ACKNOWLEDGEMENT AND
ACCEPTANCE AGREEMENT FOR C. COBB SUBDIVISION**

This First Amendment to the Owner's Acknowledgement and Acceptance Agreement for C. Cobb Subdivision ("**Agreement**") located at 424 E. Chicago Avenue, 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 Christopher Cobb ("**OWNER AND DEVELOPER**"), with an address of 424 E. Chicago Avenue, Naperville, IL 60540. 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 with a common address of 424 E. Chicago Avenue, Naperville, IL 60540, having a parcel identification number of 08-18-328-021 (hereinafter referred as the ("**SUBJECT PROPERTY**"). OWNER AND DEVELOPER is the owner of the SUBJECT PROPERTY.

B. The SUBJECT PROPERTY is subject to the terms and conditions set forth in the following ordinances ("**C. Cobb Subdivision Ordinances**"), approved for the SUBJECT PROPERTY by the Naperville City Council on February 16, 2021:

- | | |
|------------------|---|
| Ordinance 21-016 | An ordinance approving a Preliminary/Final Plat of Subdivision and an Owner's Acknowledgement and Acceptance Agreement for the C. Cobb Subdivision (" OAA ") |
| Ordinance 21-017 | An ordinance granting a temporary use to permit existing improvements to remain on Lot 2 of the C. Cobb Subdivision (" Temporary Use Ordinance ") |

Ordinance 21-018 An ordinance authorizing execution of an Encroachment License Agreement with the City to allow a section of an existing iron fence along with two stone pillars to encroach into the Sleight Street right-of-way adjacent to Lot 2 of the C. Cobb Subdivision ("**Encroachment Agreement**").

C. On March 2, 2021, the Naperville City Council moved to reconsider Ordinance 21-016 in order to allow the Preliminary/Final Subdivision Plat for the C. Cobb Subdivision to be recorded prior to completion of the work specified in Section 3.2 of the Owner's Acknowledgement and Acceptance Agreement subject to provision of surety.

D. On March 16, 2021, The Naperville City Council passed Ordinance 21-____ amending Ordinance 21-016 and approving this Agreement.

E. In consideration of the premises and the mutual promises contained herein, the Parties agree that the OAA shall remain in full force and effect except as amended by adding the underlined language and deleting the stricken language as follows:

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 C. Cobb Subdivision Ordinances, and Ordinance 21-_____.
3. **Removal and Retention of Existing Structures.**
 - 3.1 **Lot 2.** Subject to the provisions of the C. Cobb Subdivision Ordinances, OWNER AND DEVELOPER has beenis granted a temporary use to allow an iron fence with stone pillars, a stone wall, and a PVC fence ("**Existing Improvements**") to remain on Lot 2 of the C. Cobb Subdivision for a period of two (2) years from the date of Council approval of the Temporary Use Ordinance (Ordinance 21-017) unless an extension is agreed upon by the City in accordance with the Naperville Municipal Code then in effect. Said Existing Improvements are depicted on the Site Plan prepared by Martin M. Engineering, Inc., dated January 19, 2021 ("**Site Plan**") attached hereto as "**Attachment #1**". The Existing Improvements that are in the City right-

of-way on Sleight Street as depicted on the Site Plan shall be subject to the Encroachment Agreement referenced in Recital C herein.

3.1.1 At the end of the two-year timeframe permitted by the Temporary Use Ordinance, or any extension thereof approved in compliance with the Naperville Municipal Code then in effect, OWNER AND DEVELOPER shall either remove the Existing Improvements from Lot 2 or shall bring the Existing Improvements into compliance with the Naperville Municipal Code, as amended from time to time, by virtue of construction of a principal structure on Lot 2. As noted in Section 9.1, these obligations shall be binding upon any future owners of Lot 2.

3.1.2 Prior to any conveyance of Lot 2, OWNER AND DEVELOPER shall give written notification to the purchaser regarding the requirements of this Section 3.1 including but not limited to the owner's obligation to remove the Existing Improvements as set forth herein. Such notice shall include a statement to the effect that an ordinance violation may be filed against the owner of Lot 2 for each day that a violation of the requirements set forth herein continues. The CITY's Zoning Administrator shall be provided a copy of said notice and the date, manner, and to whom such notification was given.

3.2 **Required Work Outside of Lot 2.** OWNER AND DEVELOPER shall complete the following work described below, as depicted on the Site Plan ("Required Work"), prior to recordation of the Subdivision Plat:

3.2.1a. Remove a portion of the brick paver patio on Lot 1 so that the patio provides a minimum of a five-foot (5') setback from the east lot line of Lot 1.

3.2.2b. Remove the orphan apron driveway and associated depressed curb in the Chicago Avenue right-of-way adjacent to Lot 1 and replace with full curb and gutter. Restore the right-of-way with sod.

3.2.3c. Remove the service walk in the Chicago Avenue right-of-way adjacent to Lot 2. Restore the right-of-way with sod.

3.2.1 The Required Work shall be completed by OWNER AND DEVELOPER and approved by the City Engineer no later than July 1, 2021 unless said timeframe is extended by the City Engineer.

3.2.2 OWNER AND DEVELOPER shall provide and maintain financial surety in the form of a letter of credit in a form and from a source approved to the City Attorney, or a cash deposit in a form approved by the City Attorney, in the amount of \$4,054.88 (110% of the approved engineer's cost estimate) which guarantees the completion

of the Required Work on or before July 1, 2021. Said surety shall be received and approved by the City Attorney prior to recordation of the Preliminary/Final Subdivision Plat for the C. Cobb Subdivision and prior to issuance of a site development permit. Notwithstanding provision of said surety, until the Required Work has been approved by the City Engineer, OWNER AND DEVELOPER shall remain obligated for completion of said Required Work and/or (at the City's sole discretion) to pay any costs for said Required Work to the extent that the surety is not sufficient to pay for the costs of the Required Work, 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.

As to any 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.

3.2.3 Prior to any conveyance of Lot 2, OWNER AND DEVELOPER shall give written notification to the purchaser regarding the requirements of this Section 3.2 including but not limited to the owner's obligation to complete the Required Work as set forth herein. The CITY's Zoning Administrator shall be provided a copy of said notice and the date, manner, and to whom such notification was given.

4. **School Donation:** OWNER AND DEVELOPER agrees to abide by the school 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. Further, 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 building permit issuance and shall be made prior to issuance of the building permit. Payment of the required school donation shall not be paid under protest, or otherwise objected to. In accord with the Per Permit Payment provisions of the Naperville Municipal Code, no credit shall be given for the residence currently located on Lot 1.
5. **Park Donation:** 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. Further, OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required park 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 park donation table set forth in Section 7-3-5 of the Naperville Municipal Code in effect at the time of the building permit issuance and shall be made prior to issuance of the building permit. Payment of the required park donation shall not be paid under protest, or otherwise objected to. In accord with the Per Permit Payment provisions of the Naperville Municipal Code, no credit shall be given for the residence currently located on Lot 1.

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 **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.
 - 6.2 **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.
7. **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.
8. **Sidewalks.** The OWNER AND DEVELOPER shall install public sidewalk, at the OWNER AND DEVELOPER'S sole cost, across the Sleight Street frontage of the SUBJECT PROPERTY prior to issuance of the final occupancy permit for Lot 2 of the C. Cobb Subdivision.
9. **General Conditions.**
 - 9.1 **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 OWNER AND DEVELOPER'S ~~their respective~~ successors, assigns, and transferees, ~~and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.~~

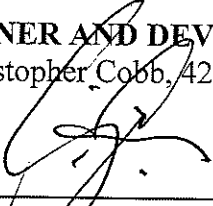
- 9.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
- 9.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 9.4 **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party.
- 9.5 **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.
- 9.6 **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.
- 9.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 9.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 10.13 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.
- 9.9 **Automatic Expiration.** If the 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 final plat of subdivision and this Agreement by the City Council, the final plat of subdivision and this Agreement shall automatically lapse and become null and void without further action by the City.
- 9.10 **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 and 9.1, 9.2, 9.5, ~~and 9.6,~~ and 9.10.

- 9.11 **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.
- 9.12 **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.
- 9.13 **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:

Christopher Cobb, 424 E. Chicago Avenue, Naperville, IL 60540



[Signature]

Christopher Cobb

[Printed name]

Owner

[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Christopher Cobb
this 4th day of March 2021.

Kristen L. Murzyn

Notary Public

Kristen L. Murzyn

Print Name



Given under my hand and official seal this 4th day of March, 2021.

-Seal-

Kristen L. Murzyn

Notary Public
My Commission Expires: 7/7/23

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

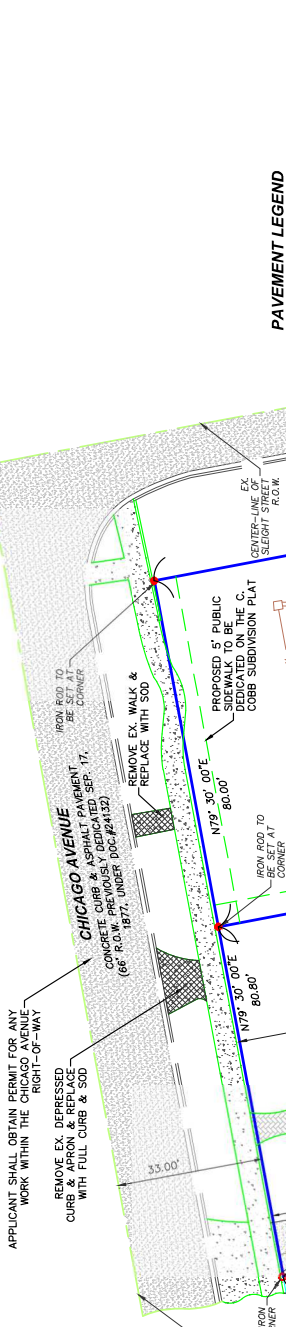
ATTEST:

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

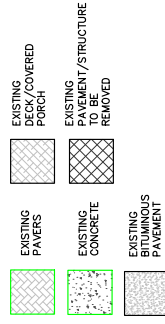
Date: _____

PROPOSED SITE PLAN

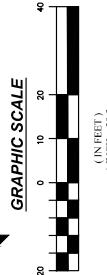
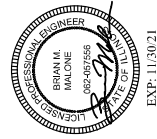
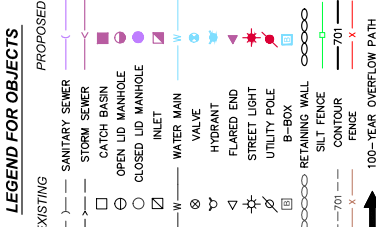
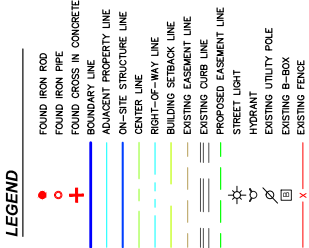
FOR THE RESUBDIVISION OF LOT 1 IN C & S COBB RESUBDIVISION OF PARTS 1 AND 2 OF FORT HILL ADDITION TO NAPERVILLE, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 2009 AS DOCUMENT R2009-126281, IN DUPAGE COUNTY.



PAVEMENT LEGEND



SITE PLAN



LOTS 1 & 2 ~ C. COBB SUBDIVISION

424 E. CHICAGO AVE.
NAPERVILLE, IL

PROPOSED SITE PLAN

DRAWN BY: BMM
SCALE: 1"=20'

CHECKED BY: BMM
DATE: 07/07/21

JOB NUMBER:
19-283

SHEET:
1 OF 1

DATE DESCRIPTION

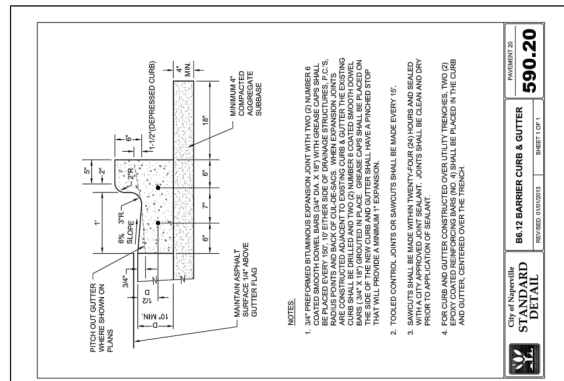
1 07/19/21 PER VILLAGE REVIEW

PER VILLAGE REVIEW

MARTIN M. Engineering, Inc.

SITE DESIGN CIVIL ENGINEERS & SURVEYORS
20723 OAKWOOD DRIVE
MOKEVA, ILLINOIS 60448
VOICE: (708) 995-1323
FAX: (708) 995-1384
LICENSE NO. 164.062585-0010

CITY OF NAPERVILLE PROJECT NO. 20-1000093



1. COVERED SANDWICH PANEL ROOF EXPANSION JOINT WITH TYPICAL DIMENSIONS SHALL BE PLACED EVERY 100' OR OTHER SIZE OF DRAINAGE STRUCTURES, P.C.S., ARE CONSTRUCTED ADJACENT TO EXISTING CURB & GUTTER. THE EXISTING CURB & GUTTER SHALL BE MAINTAINED IN PLACE. DRAINAGE CURB SHALL BE PLACED ON TOP OF EXISTING CURB & GUTTER. THE NEW CURB SHALL BE PLACED ON TOP OF EXISTING CURB & GUTTER. THE CURB SHALL BE PLACED ON TOP OF EXISTING CURB & GUTTER. THE CURB SHALL BE PLACED ON TOP OF EXISTING CURB & GUTTER.
2. TOILET CONTROL JOINTS OR SAWCUTS SHALL BE MADE EVERY 10'.
3. SAWCUTS SHALL BE MADE WITHIN TWENTY-FOUR (24) HOURS AND SEALED PRIOR TO APPLICATION OF SEALANT. JOINTS SHALL BE CLEAN AND DRY PRIOR TO APPLICATION OF SEALANT.
4. FOR CURB AND GUTTER CONSTRUCTION OVER UTILITY TRENCHES, TWO (2) EPDM COATED MEMBRANE BARS (NO. 9) SHALL BE PLACED IN THE CURB AND GUTTER, CENTERED FOUR (4) FEET APART.

CITY OF NAPERVILLE
STANDARD
DETAIL
590.20
REVISED 03/2021
SHEET 1 OF 1