

PROPERTY ADDRESS:
4020 - 4036 ASHWOOD PARK COURT
NAPERVILLE, IL 60564

P.I.N.S
07-01-17-205-037
07-01-17-205-038

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

**AMENDED OWNER'S OR DEVELOPER'S ACKNOWLEDGEMENT &
ACCEPTANCE AGREEMENT AS TO LOTS 1 AND 2 OF THE ASHWOOD
PARK NORTH TOWNHOMES SUBDIVISION; UPON RESUBDIVISION TO
BE KNOWN AS LOTS ONE THROUGH FOUR OF THE ASHWOOD PARK
NORTH TOWNHOMES FIRST RESUBDIVISION**

This Amended Owner's or Developer's Acknowledgement & Acceptance Agreement ("Agreement") is entered into by and between 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 Crestview Builders, Inc. ("OWNER AND DEVELOPER"), with offices at 3956 Caliente Circle, Naperville, IL 60564. The City and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

RECITALS

A. WHEREAS, on April 19, 2005, the City approved Ordinance 05-065 granting a conditional use for a planned unit development and approving the Preliminary Plat of Subdivision and Planned Unit Development for Ashwood Park North – Townhomes located at the southwest corner of 248th Avenue and 103rd Street;

B. WHEREAS, on September 6, 2005, the City approved Ordinance 05-162 approving the Final Plat of Planned Unit Development and Subdivision and Owner's Acknowledgement and Acceptance for Ashwood Park North Townhomes; and

C. WHEREAS, on February 19, 2013, the City approved Ordinance 13-009 approving a major change to a planned unit development and a revised Owner's Acknowledgement and Acceptance for Ashwood Park North Townhomes which major change eliminated the age restriction requirement imposed by Ordinance 05-162 and imposed a school donation fee requirement.

D. WHEREAS, OWNER AND DEVELOPER now seeks resubdivision of Lots 1 and 2 of the Ashwood Park North Townhome Subdivision into Lots 1 through 4 of a subdivision to be known as Ashwood Park North Townhomes First Resubdivision in order to resubdivide the SUBJECT PROPERTY into four residential lots to accommodate four duplexes (“**Subdivision Plat**”). The four lots which comprise the Ashwood Park North Townhomes First Resubdivision are located at 4020-4036 Ashwood Park Court, Naperville, IL 60564, and have parcel identification numbers of 07-01-17-205-037 and 07-01-17-205-038 (hereinafter referred as the “**SUBJECT PROPERTY**”).

E. WHEREAS, this amendment does not affect Lots 3 through 6 of the Ashwood Park North Townhomes Subdivision.

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

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

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (iii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iv) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY unless otherwise modified by this Agreement.
3. **Development of the SUBJECT PROPERTY.** OWNER AND DEVELOPER shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with Amended Master Grading Plan prepared by CEMCON, Ltd., dated June 24, 2019, last revised October 23, 2019 (“**Grading Plan**”) at its sole cost.
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. 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. For the purpose of calculating said Per Permit

Payment, the proposed duplexes shall be classified as attached single-family dwelling units, which is consistent with the classification used in the Owner's Acknowledgement and Acceptance for Ashwood Park North Townhomes Subdivision approved by Ordinance 13-009. Payment of the required school donation shall not be paid under protest, or otherwise objected to.

The provisions set for in this Section shall supersede the provisions of the School Donation Section of the Owner's Acknowledgement and Acceptance for Ashwood Park North Townhomes approved by Ordinance 13-009 only as to Lots 1 and 2 of said subdivision.

5. **Park Donation:** The OWNER AND DEVELOPER previously made a lump sum cash contribution for the land-cash park donation required by the Naperville Municipal Code for all lots within the Ashwood Park North Townhomes Subdivision which includes the SUBJECT PROPERTY. No additional payment is due at this time.

Notwithstanding the foregoing, if the number of bedrooms in any of the dwelling units in the Ashwood Park North Townhomes First Resubdivision exceeds two bedrooms, the OWNER AND DEVELOPER acknowledges and agrees the permit applicant shall be charged for additional bedroom, in accordance with the park donation table contained in the Naperville Municipal Code in effect at the time the building permit is issued.

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 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. General Conditions.


- 8.1 **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.
- 8.2 **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.
- 8.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 8.4 **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party.
- 8.5 **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.
- 8.6 **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.
- 8.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 8.8 **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.
- 8.9 **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.

- 8.10 **Survival.** The terms and conditions set forth in the following paragraphs of this Agreement shall survive the expiration or termination of this Agreement: Section 1 through 7 and Sections 8.1, 8.2, 8.5, 8.6, and 8.10.
- 8.11 **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.
- 8.12 **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.
- 8.13 **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:



[Signature]
STEVEN DANO

[Printed name]
AGENT

[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Steven Dano
this 24 day of Feb 2018.

Karen Maxam
Notary Public



Karen Maxam
Print Name

Given under my hand and official seal this 24 day of Feb, 2018.

-Seal- Karen Maxam
 OFFICIAL SEAL
 KAREN MAXAM
 NOTARY PUBLIC - STATE OF ILLINOIS
 MY COMMISSION EXPIRES: 04/01/21
 Notary Public
 My Commission Expires: 4/1/21

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____