

PROPERTY ADDRESS:
24W560 77TH STREET
NAPERVILLE, IL 60565

P.I.N.
08-28-301-009

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

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR 77TH STREET PROJECT**

This Owner's Acknowledgement and Acceptance Agreement for 77th Street Project ("**Agreement**") located at 24W560 77th Street, Naperville, IL 60565, 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, Oak Creek Capital Partners, LLC, an Illinois limited liability company ("**DEVELOPER**"), with offices at PO Box 5726, Naperville, IL 60567, and Wehrli Place, LLC, an Illinois limited liability company ("**OWNER**"), with offices at 618 W. Jefferson 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 24W560 77th Street, Naperville, IL 60565, having parcel identification number of 08-28-301-009 (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 ("**77th Street Project Ordinances**"), approved for the SUBJECT PROPERTY by the Naperville City Council on February 5, 2019:

- | | |
|------------------|---|
| Ordinance 19-142 | An ordinance authorizing the execution of an Annexation Agreement for the property located at 24W560 77 th Street (77 th Street Project) (" Annexation Agreement "); |
| Ordinance 19-143 | An ordinance annexing certain property located at 24W560 77 th Street (77 th Street Project); |

- Ordinance 19-144 An ordinance rezoning the property located at 24W560 77th Street (77th Street Project) to R1A (Low Density Single Family Residence District); and
- Ordinance 19-145 An ordinance approving the Preliminary Plat of Subdivision for 77th Street Project.

D. OWNER AND DEVELOPER have petitioned the City for approval of a Final Plat of Subdivision for the 77th Street Project Subdivision (“**Final Subdivision Plat**”) in order to subdivide the SUBJECT PROPERTY into ten (10) single-family residential lots.

E. 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; (ii) the terms of the Annexation 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, including but not limited to the 77th Street Project Ordinances.
3. **Terms and Conditions of Annexation Agreement Affirmed.** The Annexation Agreement for the SUBJECT PROPERTY was approved by the Naperville City Council on November 5, 2019 by Ordinance No. 19-142 and recorded with the DuPage County Recorder on August 4, 2020 (DuPage County Recording No. R2020-083495). The terms, conditions, and provisions of the Annexation Agreement, including all exhibits thereto, are affirmed by this Agreement, including but not limited to provisions set forth in Sections S6.0 (Emergency Access), S9.0 (School and Park Donations), S10.0 (Sidewalks), S11.0 (Parkway Trees) and S12.0 (77th Street Improvements).
4. **Development of the SUBJECT PROPERTY.** OWNER AND DEVELOPER shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with final engineering plans prepared by CEMCON, Ltd., dated December 16, 2019, last revised March 5, 2020 (“**Final Engineering Plans**”) at its sole cost unless otherwise provided herein.

5. **Stormwater Detention and Pedestrian Easement Agreement.** Through an Stormwater Detention and Pedestrian Easement Agreement ("Easement Agreement") with the Estates on Wehrli Road Homeowners' Association, which is the homeowner's association for the Lizzadro Estates Subdivision, the OWNER AND DEVELOPER shall expand stormwater detention facilities on a lot within the Lizzadro Estates Subdivision located adjacent to the SUBJECT PROPERTY, specifically Lot 18 located on PIN 08-28-301-039 which currently provides stormwater detention to the Lizzadro Estates Subdivision. OWNER AND DEVELOPER shall also construct a portion of the stormwater detention facilities on Outlot A of the SUBJECT PROPERTY.

The Easement Agreement further grants owners of property within the Lizzadro Estates Subdivision and the 77th Street Project Subdivision easement rights in a pedestrian ingress/and egress easement located on the north five feet (5') and the west five feet (5') of Outlot A.

The Easement Agreement shall be recorded concurrently with the recordation of the Final Subdivision Plat.

6. **School Donation:** OWNER AND DEVELOPER agree 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 have 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.
7. **Park Donation:** OWNER AND DEVELOPER agree 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 have 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.
8. **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:

- 8.1 **Engineering Review Fee:** \$6,062.49 (1.65% of the approved engineer's cost estimate). This fee is due prior to recording the Final Plat of Subdivision.
 - 8.2 **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.
 - 8.3 **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.
9. **Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of \$404,165.80 (110% of the approved engineer's cost estimate) which guarantees the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("Public Improvements"). Financial surety shall be received and approved prior to issuance of a site development permit. 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 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.

10. **Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the 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.

11. **General Conditions.**

11.1 **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.

11.2 **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.

11.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.

11.4 **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party.

11.5 **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.

11.6 **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.

11.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.

11.8 **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.

11.9 **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.

- 11.10 **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 10 and 11.1, 11.2, 11.5, and 11.6.
- 11.11 **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.
- 11.12 **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.
- 11.13 **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/

DEVELOPER:

Oak Creek Capital Partners, LLC, PO Box 5726, Naperville, IL 60567

[Handwritten Signature]
[Signature]

John McHale
[Printed name]

Member
[Title]

State of Illinois)
) ss
County of DuPage)

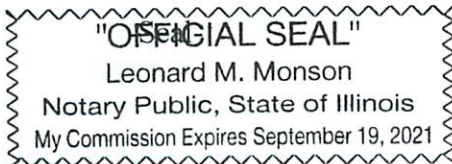
The foregoing instrument was acknowledged before me by John McHale
this 11th day of August 2020.

[Handwritten Signature]
Notary Public

LEONARD M. MONSON
Print Name

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

[Handwritten Signature]
Notary Public
My Commission Expires: 9/19/2021



OWNER:

Wehrlie Place, LLC, 618 W. Jefferson Avenue, Naperville, IL 60540

[Handwritten Signature]
[Signature]

John Wehrlie
[Printed name]

Manager
[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by John Wehrlie
this 11th day of August 2020.

[Handwritten Signature]
Notary Public

Leonard M. Monson
Print Name

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



[Handwritten Signature]
Notary Public
My Commission Expires: 9/19/21

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____