

**PROPERTY ADDRESS:
5S275 AND 5S311 NAPERVILLE-WHEATON ROAD
NAPERVILLE, IL 60563**

**P.I.N.S
08-08-106-009
08-08-106-010**

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

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR LEIGH SUBDIVISION**

This Owner's Acknowledgement and Acceptance Agreement for Leigh Subdivision ("**Agreement**") located at 5S275 and 5S311 Naperville-Wheaton Road Naperville, IL 60563, 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 Naperville Wheaton LLC, an Illinois limited liability company ("**OWNER AND DEVELOPER**"), with offices at 127 Aurora 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 within the corporate limits of the City of Naperville with a common address of 5S275 and 5S311 Naperville-Wheaton Road Naperville, IL 60563, having parcel identification numbers of 08-08-106-009 and 08-08-106-010 (hereinafter referred as the "**SUBJECT PROPERTY**").

B. The SUBJECT PROPERTY is subject to the terms and conditions set forth in the following ordinances ("**Leigh Subdivision Ordinances**"), approved for the SUBJECT PROPERTY by the Naperville City Council on February 5, 2019:

- | | |
|------------------|--|
| Ordinance 19-016 | An ordinance authorizing the execution of an Annexation Agreement for the property located at 5S275 and 5S311 Naperville/Wheaton Road (Leigh Subdivision) (" Annexation Agreement "); |
| Ordinance 19-017 | An ordinance annexing certain property located at 5S275 and 5S311 Naperville/Wheaton Road (Leigh Subdivision); |
| Ordinance 19-018 | An ordinance rezoning the property located at 5S275 and 5S311 Naperville/Wheaton Road (Leigh Subdivision) to |

R3A (Medium Density Multiple Family Residence District);
and

Ordinance 19-019 An ordinance approving the Preliminary Plat of Subdivision for Leigh Subdivision.

D. OWNER AND DEVELOPER has petitioned the City for approval of a Final Plat of Subdivision for the Leigh Subdivision (“**Final Subdivision Plat**”) in order to subdivide the SUBJECT PROPERTY into four 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 Leigh Subdivision Ordinances.
3. **Terms and Conditions of Annexation Agreement Affirmed.** The Annexation Agreement for the SUBJECT PROPERTY was approved by the Naperville City Council on February 5, 2019 by Ordinance No. 19-016 and recorded with the DuPage County Recorder on _____ (DuPage County Recording No. R2019 - _____). 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), S10.0 (Sidewalks), S11.0 (Storm Sewer Improvements to Naperville-Wheaton Road), S12.0 (Watermain Improvements), and S13.0 (Sanitary Main 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 Roake and Associates, Inc., dated March 1, 2019, last revised June 19, 2019 (“**Final Engineering Plans**”) at its sole cost unless otherwise provided herein.

5. **School Donation: \$11,458.80** (based on 4 three-bedroom detached units and credit for 2 three-bedroom detached units), in accordance with Table A (attached). OWNER and DEVELOPER acknowledges that the required school donation amount (\$11,458.80) is calculated based on Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code. OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required school donation pursuant to the "Estimated Lump Sum Payment" provisions set forth in Section 7-3-5:5.2.1 and Subsection 5:5.2.1.1 of the Naperville Municipal Code. Therefore, OWNER AND DEVELOPER shall receive a school donation credit for 2 three-bedroom single-family residences, one of which is currently located on the SUBJECT PROPERTY and the other of which was demolished in 2017.

OWNER and DEVELOPER agrees that payment of the school donation amount established herein shall not be paid under protest, or otherwise objected to, and shall be paid prior to recording the Final Subdivision Plat for the SUBJECT PROPERTY. OWNER and DEVELOPER further acknowledges that the school donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds 3 bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the school donation table contained in the Naperville Municipal Code in effect at the time the building permit is issued.

6. **Park Donation: \$16,309.44** (based on 4 three-bedroom detached units and credit for 2 three-bedroom detached units), in accordance with Table B (attached). OWNER and DEVELOPER acknowledges that the required park donation amount (\$16,309.44) is calculated based on Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code. OWNER AND DEVELOPER has elected to pay a cash-in-lieu of a contribution of land for the required park donation pursuant to the "Estimated Lump Sum Payment" provisions set forth in Section 7-3-5:5.2.1 and Subsection 5:5.2.1.1 of the Naperville Municipal Code. Therefore, OWNER AND DEVELOPER shall receive a park donation credit for 2 three-bedroom single-family residences, one of which is currently located on the SUBJECT PROPERTY and the other of which was demolished in 2017.

OWNER and DEVELOPER agrees that payment of the park donation amount established herein shall not be paid under protest, or otherwise objected to, and shall be paid prior to recording the Final Subdivision Plat for the SUBJECT PROPERTY. OWNER and DEVELOPER further acknowledges that the park donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds 3 bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the park donation table contained in the Naperville Municipal Code in effect at the time the building permit is issued.

- 7. 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:
- a. **Engineering Review Fee:** \$2,949.69 (1.65% of the approved engineer's cost estimate). This fee is due prior to recording the Final Plat of Subdivision.
 - b. **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.
 - c. **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.
- 8. 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 \$196,645.90 (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.

- 9. 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.

10. General Conditions

- 10.1 **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.
- 10.2 **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.
- 10.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 10.4 **Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- 10.5 **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.
- 10.6 **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.
- 10.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 10.8 **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.

- 10.9 **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, this Agreement shall automatically expire without any further action by either Party hereto.
- 10.10 **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 9 and 10.1, 10.2, 10.5, and 10.6.
- 10.11 **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.
- 10.12 **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.
- 10.13 **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/

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OWNER AND DEVELOPER:

Rachel M. Roseman

[Signature]

Rachel M. Roseman

[Printed name]

Member

[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Rachel M. Roseman
this 2nd day of July 2019.

Matt Goodman
Notary Public

Matt Goodman
Print Name

Given under my hand and official seal this 2nd day of July, 2019.

-Seal-

Matt Goodman
Notary Public
My Commission Expires: July

September 19, 2020



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OWNER AND DEVELOPER:

James G. Caneff
[Signature]

JAMES G. CANEFF
[Printed name]

MEMBER
[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Jim Caneff
this 2nd day of July 2019.

Matt Goodman
Notary Public

Matt Goodman
Print Name

Given under my hand and official seal this 2nd day of July, 2019.

-Seal-

Matt Goodman
Notary Public
My Commission Expires: September 19, 2020



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OWNER AND DEVELOPER:

Kristen Whitaker
[Signature] ✓

Kristen Whitaker
[Printed name]

Member
[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Kristen Whitaker
this 2nd day of July 2019.

Matt Goodman
Notary Public

Matt Goodman
Print Name

Given under my hand and official seal this 2nd day of July, 2019.

-Seal- Matt Goodman
Notary Public
My Commission Expires: September 19, 2020



CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

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

Date: _____

School Donation Worksheet

Name of Subdivision Leigh Subdivision *

School Donation = **Land** 0.0360 **Cash** \$11,458.80 = Total Land x \$318,300.00
 =Round (((Total Elementary Pop. x 0.0231) + (Total Jr. High Pop. x 0.0208) + (Total High School Pop x 0.0267)),4)

Type of Unit	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit
Detached Single-family						
2-bedroom	0.120	0.000	0.411	0.000	1.856	2.746
2 3-bedroom	0.268	0.536	0.486	0.972	1.913	3.826
4-bedroom	0.371	0.000	0.702	0.000	1.985	3.532
5-bedroom	0.386	0.000	0.590	0.000	2.191	3.645
Attached Single-Family						
1-Bedroom						0.000
2-Bedroom	0.206	0.000	0.084	0.000	1.318	1.697
3-Bedroom	0.214	0.000	0.104	0.000	1.966	2.374
4-Bedroom	0.183	0.000	0.271	0.000	2.102	2.767
Apartments						
Efficiency					1.400	1.400
1-Bedroom	0.058	0.000	0.032	0.000	1.653	1.710
2-Bedroom	0.129	0.000	0.064	0.000	1.744	2.007
3-Bedroom	0.199	0.000	0.115	0.000	2.005	2.475
People Produced	0.536		0.972	0.306	0.270	3.826

1.548

* A total of 4 single family lots being proposed. Credit is given to 2 existing three-bedroom single-family homes.

Park Donation Work Sheet

Name of Subdivision Leigh Subdivision *

Park Donation = **Land** **0.0504** **Cash** **\$16,309.44** = Land Donation x \$323,600.00

=Round((Total People Produced x 0.0086),4)

Type of Unit	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit						
Detached Single-family												
2-bedroom	0.127	0.000	0.327	0.000	0.102	0.000	0.118	0.000	1.779	0.000	2.453	0.000
2 3-bedroom	0.244	0.488	0.440	0.880	0.179	0.358	0.177	0.354	1.892	3.784	2.930	5.860
4-bedroom	0.348	0.000	0.522	0.000	0.235	0.000	0.265	0.000	2.116	0.000	3.486	0.000
5-bedroom	0.333	0.000	0.533	0.000	0.262	0.000	0.279	0.000	2.344	0.000	3.750	0.000
Attached Single-Family												
1-Bedroom										0.000		0.000
2-Bedroom	0.072	0.000	0.091	0.000	0.044	0.000	0.080	0.000	1.610	0.000	1.897	0.000
3-Bedroom	0.157	0.000	0.178	0.000	0.060	0.000	0.113	0.000	1.746	0.000	2.253	0.000
4-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000	0.198	0.000	2.127	0.000	3.053	0.000
Apartments												
Efficiency									1.210	0.000	1.210	0.000
1-Bedroom	0.015	0.000	0.033	0.000	0.013	0.000	0.013	0.000	1.691	0.000	1.764	0.000
2-Bedroom	0.037	0.000	0.063	0.000	0.028	0.000	0.030	0.000	1.748	0.000	1.906	0.000
3-Bedroom	0.037	0.000	0.152	0.000	0.091	0.000	0.083	0.000	2.330	0.000	2.692	0.000
People Produced		0.488		0.880		0.358		0.354		3.784		5.860

* A total of 4 single family lots being proposed. Credit is given to 2 existing three-bedroom single-family homes.