

**PROPERTY ADDRESS:
55578 TUTHILL ROAD
NAPERVILLE, IL 60563**

**P.I.N.
08-08-303-010**

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

ANNEXATION AGREEMENT
FOR 55578 TUTHILL ROAD

THIS ANNEXATION AGREEMENT ("**Agreement**") is entered into this ____ day of _____, 2022 (*insert date of signature of the Mayor which shall be the "EFFECTIVE DATE"*), between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government under the statutes and Constitution of the State of Illinois, with offices at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter referred to as the "**CITY**") and Kevin E. Madden and Catherine S. Madden with the street address of 1411 Larsen Lane, Naperville, IL 60563 (hereinafter referred to as the "**OWNERS AND DEVELOPERS**").

RECITALS

1. **WHEREAS**, the OWNERS AND DEVELOPERS are the owners of record of all of the real property described in **EXHIBIT A**, which property is contiguous to the CITY and not within the corporate limits of any municipality (hereinafter referred to as the "**SUBJECT PROPERTY**"); and

2. **WHEREAS**, the OWNERS AND DEVELOPERS have signed and filed a Petition for Annexation and Zoning with the Naperville City Clerk for the **SUBJECT PROPERTY**; and

3. **WHEREAS**, all notices, publications, public hearings and all other matters attendant to such Petition for Annexation and Zoning, have been given, held or performed as required by statute or the CITY'S ordinances, regulations, and procedures; and

4. **WHEREAS**, the CITY'S corporate authorities have considered the annexation of the SUBJECT PROPERTY and have determined the Petition for Annexation and Zoning to be in order; and

5. **WHEREAS**, the OWNERS AND DEVELOPERS propose that the SUBJECT PROPERTY be developed pursuant to the zoning classification(s) specified in the CITY'S Zoning Ordinance, and the terms and conditions set forth and referenced herein; and

6. **WHEREAS**, in addition to the matters specified above, the parties hereto have considered all other matters and hereby agree that the development of the SUBJECT PROPERTY for the uses permitted in the R1 (Low Density Single Family Residence) District of the CITY'S Zoning Ordinance and in accordance with the terms and conditions of this Agreement will inure to the benefit and improvement of the CITY and its residents, will promote the CITY'S sound planning and development, and will otherwise enhance and promote the general welfare of the CITY'S residents; and

7. **WHEREAS**, the CITY and the OWNERS AND DEVELOPERS have determined that the development of the SUBJECT PROPERTY should proceed as conveniently as possible and be subject to the ordinances, codes and regulations of the CITY, now in force and effect and as amended from time to time, unless specifically amended as part of the special terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties agree that:

GENERAL CONDITIONS FOR
THE ANNEXATION OF THE SUBJECT PROPERTY

G1.0 RECITALS.

G1.1 The above-stated Recitals are a material part of this Agreement and are hereby incorporated in this Subsection G1.1 by reference.

G2.0 ANNEXATION AND ZONING.

G2.1 The SUBJECT PROPERTY shall be zoned as set forth in the Recitals and in the Special Conditions below.

G2.2 If this Agreement and the Ordinance approving this Agreement, and those ordinances pertaining to the SUBJECT PROPERTY which were approved by the CITY concurrently with this Agreement, are not recorded with the Office of the Recorder in the county in which the SUBJECT PROPERTY is located within the timeframe set forth in said Ordinance and ordinances, said Ordinance and ordinances, and all exhibits thereto, including but not limited to this Agreement, shall be automatically null and void without further action being taken by the City. OWNERS AND DEVELOPERS shall defend, indemnify, and hold the CITY and its officers, agents, and employees harmless for any error or omission in recording or for failure to timely record.

G2.3 Notwithstanding the area, lot, yard, and height standards contained in the Naperville Zoning Code for the zoning classification granted pursuant to this Agreement, after the fifth (5th) year after this Agreement is approved, if the SUBJECT PROPERTY is developed with any residential uses, the SUBJECT PROPERTY may only be developed with uses which comply with the density limitations specified in the then-current zoning classification applicable to the SUBJECT PROPERTY.

G3.0 ANNEXATION FEES.

G3.1 The OWNERS AND DEVELOPERS have paid all applicable annexation fees specified in Section S2.0 in accordance with Section 1-9E-1 of the Naperville Municipal Code.

G4.0 PARK DISTRICT ANNEXATION.

G4.1 The OWNERS AND DEVELOPERS have filed concurrently herewith a petition executed by OWNERS AND DEVELOPERS to annex the SUBJECT PROPERTY to the Naperville Park District. Said petition is conditional and not effective until annexation of the SUBJECT PROPERTY to the City of Naperville.

G5.0 TRANSPORTATION IMPACT FEES – INTENTIONALLY OMITTED.

G6.0 SIDEWALKS AND OTHER TRANSPORTATION RELATED PUBLIC IMPROVEMENTS.

G6.1 Prior to recordation of a Final Plat of Subdivision for any portion of the SUBJECT PROPERTY, the OWNERS AND DEVELOPERS shall, at their sole cost and expense, and at the discretion of the City Engineer:

1. construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way, as approved by the City Engineer; or
2. pay to the CITY the estimated cost to construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way. Upon payment, OWNERS AND DEVELOPERS shall have no further obligation to construct said sidewalk.

G7.0 UTILITY LINES AND EASEMENTS.

G7.1 The OWNERS AND DEVELOPERS shall grant to the CITY, at no cost to the CITY, any easements within the SUBJECT PROPERTY which the CITY may determine are necessary for the purposes of constructing, installing, replacing and maintaining sanitary sewers, water mains, electric service facilities, and other utilities necessary or incidental to service the SUBJECT PROPERTY.

G7.2 The CITY shall allow the OWNERS AND DEVELOPERS to use appropriate easements obtained by the CITY from other parties for the purpose of providing sanitary sewers, water mains and other utilities to service the SUBJECT PROPERTY.

G8.0 WATER SUPPLY AND DISTRIBUTION SYSTEM AND SANITARY SEWER COLLECTION SYSTEM.

G8.1 The OWNERS AND DEVELOPERS shall be solely responsible for the cost and expense incurred to extend the CITY'S water distribution system and sanitary sewer collection system to the SUBJECT PROPERTY. Payment shall be due at the time a building permit is issued if the CITY constructs and installs the proposed extension or any portion thereof.

G8.2 The CITY shall permit the connection of the structures reasonably contemplated to be built on the SUBJECT PROPERTY to the CITY'S water supply and distribution system and sanitary sewer collection system, and shall supply water and collection facilities thereto to the same extent as may be supplied to other structures and areas within the CITY.

G8.3 The OWNERS AND DEVELOPERS shall be responsible for the cost of all water lines and sanitary sewer lines and related appurtenances located on the SUBJECT PROPERTY.

G8.4 The OWNERS AND DEVELOPERS shall also be responsible to pay for all infrastructure availability charges, connection fees and user fees for the CITY'S water distribution system and sanitary sewer collection system as set forth in the CITY'S ordinances, rules, and regulations.

G9.0 WASTEWATER TREATMENT PLANT CAPACITY.

G9.1 The CITY guarantees that at the time building permits are requested, sufficient wastewater treatment plant capacity shall exist to provide complete and adequate wastewater treatment services for the SUBJECT PROPERTY without payment of any fees other than those specified in Subsection G9.2 of this Agreement.

G9.2 The OWNERS AND DEVELOPERS shall pay all applicable wastewater infrastructure availability charges, connection fees and customary wastewater user fees in accordance with Title 8 of the Naperville Municipal Code, as amended and any rules and regulations promulgated pursuant to Title 8.

G10.0 UTILITY OVERSIZING.

G10.1 The OWNERS AND DEVELOPERS shall construct and install at its sole cost and expense all water and sanitary sewer lines shown on the approved final engineering plans submitted for development of the SUBJECT PROPERTY.

G10.2 The CITY shall pay for oversized water or sanitary sewer lines constructed as required by the CITY in accordance with the provisions of this Section to provide for increased capacity, not merely to compensate for slope differential.

G10.3 Upon installation and acceptance by the CITY of said oversized lines, for residential lines, the CITY shall reimburse the OWNERS AND DEVELOPERS for the difference between the cost to construct an eight (8") inch line and the cost to construct the oversized line. For non-residential lines, the CITY shall reimburse the OWNERS AND DEVELOPERS for the difference between the cost to construct a twelve (12") inch line and the cost to construct the oversized line.

G10.4 All such oversized lines shall be constructed and installed in strict accordance with the provisions of Section 7-3-6 of the Naperville Municipal Code (Cost Sharing Policy), as amended.

G11.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.

G11.1 OWNERS AND DEVELOPERS shall pay any and all existing Utility Rebates, Special Connection Fees, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified in Section S3.0.

G11.2 OWNERS AND DEVELOPERS shall further pay any and all future Utility Rebates, Special Connection Fees, Special Assessments, Recapture Fees, or Special Service Area Taxes, which may be properly and legally approved, established, or levied in the future. Notwithstanding the foregoing, this provision does not abrogate the right of any property owner to contest any Special Assessment or Special Service Area Tax.

G11.3 The sum of the monies to be paid pursuant to 70 ILCS 705/20(e)(1)-(5) as a result of disconnection of the SUBJECT PROPERTY from a fire protection district shall be the sole responsibility of the OWNERS AND DEVELOPERS which responsibility shall be deemed fulfilled upon payment of said sum to the CITY. Payment in full shall be paid prior to recordation of the ordinance approving annexation of the Subject Property to the CITY and prior to recordation of this Agreement. Failure or oversight to collect said sum shall not release the OWNERS AND DEVELOPERS from liability therefore. This provision shall survive the expiration or termination of this Agreement.

G12.0 ELECTRICAL UTILITY SERVICE.

G12.1 The CITY shall connect the structures reasonably contemplated to be built on the SUBJECT PROPERTY to the CITY'S electrical utility system, and shall supply electrical service to those structures to the same extent service is provided on a regular basis to CITY'S other electric customers.

G12.2 The OWNERS AND DEVELOPERS shall accept all electrical power and energy required for the SUBJECT PROPERTY from the CITY'S electrical utility system at the time such service is available.

G12.3 The OWNERS AND DEVELOPERS shall pay all applicable connection fees, and costs related to on-site electrical distribution facilities and customary user fees in accordance with Title 8 of the Naperville Municipal Code.

G13.0 REFUSE AND WEED CONTROL.

G13.1 During all phases of construction, OWNERS AND DEVELOPERS shall provide a sufficient number of construction-sized dumpsters to contain all trash and debris generated throughout the entire area of the project.

G13.2 OWNERS AND DEVELOPERS shall prevent such containers from overflowing and shall prevent debris from blowing from the site by having the containers emptied as soon as reasonably possible once they are filled.

G13.3 During all phases of construction, OWNERS AND DEVELOPERS shall regularly cut all weeds and grass in excess of eight (8") inches high on the site and on the right-of-way adjacent to the site.

G14.0 CHANGES TO ORDINANCES AND REGULATIONS.

G14.1 If during the first five (5) years of the term of this Agreement, the provisions of the existing Naperville Zoning Code as it relates to the SUBJECT PROPERTY are amended to impose more stringent requirements in the subdivision, development, or construction on the SUBJECT PROPERTY, then such more stringent requirements shall not be effective as applied to the SUBJECT PROPERTY unless such change is agreed to by the parties hereto. This provision shall not apply to amendments to the Naperville Municipal Code related to conditional uses other than those conditional uses already approved by the Naperville Plan Commission for the SUBJECT PROPERTY.

G14.2 Except as provided in Subsections G14.2.1 and G14.2.2 and G14.2.3 of this Section, if, during the first two (2) years of the term of this Agreement, the provisions of CITY ordinances or regulations are amended or modified to impose more stringent requirements for the subdivision, or construction of the site development improvements for the SUBJECT PROPERTY than were in effect as of the date of approval of this Agreement, which improvements are specified in the submitted and approved Final Engineering Plans, such amendments or modifications shall not be effective as applied to the SUBJECT PROPERTY, unless such amendments are agreed to by the parties *or* such amendments are adopted to protect the health or safety of the CITY'S residents.

G14.2.1 Any ordinances, standards, or regulations which are the subject of the CITY'S Flood Plain or Stormwater Ordinances for either DuPage or Will County shall be exempt from the provisions of subsection G14.2.

G14.2.2 Any CITY ordinances establishing the payment of subdivision, or development fees, or any taxes, dedication requirements, or reimbursement for costs which may be applicable to the SUBJECT PROPERTY shall be exempt from the provisions of subsection G14.2.

G14.2.3 Any CITY Building, Fire or Life Safety Codes or ordinances or regulations approved after the date of approval of this Agreement shall be exempt from the provisions of G14.2

G14.3 If, during the term of this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of any improvements, buildings, appurtenances, or any other development of any kind or character upon the SUBJECT PROPERTY, other than those upon which site plan approval may be based, are amended or modified to impose less restrictive requirements on development or construction upon properties situated within the CITY'S boundaries, then the benefit of such less restrictive requirements shall inure to the benefit of the OWNERS AND DEVELOPERS, and anything to the contrary contained herein notwithstanding, the OWNERS AND DEVELOPERS may proceed with development or construction upon the SUBJECT PROPERTY pursuant to the less restrictive amendment or modification applicable generally to all properties within the CITY.

G15.0 EXISTING STRUCTURES.

G15.1 At the time this Agreement is fully executed by the parties hereto, where there are any structures on the SUBJECT PROPERTY:

G15.1.1 A City of Naperville street address shall be assigned to the SUBJECT PROPERTY in accordance with Section 9-2-2 of the Naperville Municipal Code, as amended from time to time within thirty (30) days after this Agreement is fully executed by the parties hereto.

G15.1.2 Any existing structures on the SUBJECT PROPERTY shall be fully accessible for emergency vehicles, including two (2) points of access, and any "Special Conditions for the Annexation of The SUBJECT PROPERTY" set forth below ("Special Conditions").

G15.2 At the time this Agreement is fully executed by the parties hereto, any existing structures on the SUBJECT PROPERTY which fail to conform to the requirements of the CITY'S duly adopted Building and Fire Prevention Codes, as amended from time to time, shall be

brought into conformity with such requirements pursuant to any Special Conditions set forth below.

G16.0 EFFECT OF THIS AGREEMENT.

G16.1 Except as provided in Section G14.0 of this Agreement, if any relevant existing CITY resolution, ordinance, regulations, or interpretation thereof, is inconsistent with or conflicts with any provision of this Agreement, then the provisions of this Agreement shall supersede the terms of said inconsistent resolutions, ordinances, or regulations as they may be applicable to the SUBJECT PROPERTY.

G17.0 NO DISCONNECTION OR DEANNEXATION.

G17.1 Neither the OWNERS nor the DEVELOPERS nor any of their successors in interest shall file, cause to be filed, or take any action that would result in the disconnection or deannexation of the SUBJECT PROPERTY from the CITY during the term of this Agreement.

G18.0 MODIFICATIONS TO THIS AGREEMENT.

G18.1 If the OWNERS AND DEVELOPERS or the CITY wish to modify this Agreement, the CITY shall hold the necessary public hearings.

G18.2 Such hearings shall be held and an approval granted or denial given without unreasonable delay after the request is made.

G18.3 This Section shall not be construed to require the CITY to modify this Agreement.

G18.4 Any such amendment or modification may be made only as to a portion of the SUBJECT PROPERTY, or as to the provisions applying exclusively thereto, and may be without the consent of the owners of other portions of the SUBJECT PROPERTY not affected by the amendment or modification.

G19.0 BINDING EFFECT AND TERM.

G19.1 The parties intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall be recorded against the title of the SUBJECT PROPERTY in the Office of the Recorder of the county in which the SUBJECT PROPERTY is located, and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest, assignees, heirs, executors, or lessees (whether their interest is in the SUBJECT PROPERTY as a whole or in any portion or aspect thereof), and upon any successor

CITY officials and successor municipalities for a period of ten (10) years from the EFFECTIVE DATE of this Agreement.

G19.2 The zoning classification for the SUBJECT PROPERTY established by this Agreement shall survive the expiration or termination of this Agreement unless changed in accordance with applicable law.

G19.3 Any obligation owed by OWNERS AND DEVELOPERS for payment or reimbursement of monies provided for herein shall survive the termination or expiration of this Agreement.

G19.4 Any obligations to be performed hereunder by OWNERS AND DEVELOPERS shall survive the expiration or termination of this Agreement.

G20.0 CONTINUING RESPONSIBILITY.

G20.1 If the OWNERS AND DEVELOPERS sell or convey all or any portion of the SUBJECT PROPERTY during the term of this Agreement, all of the OWNERS AND DEVELOPERS' obligations specified in this Agreement shall devolve upon and be assumed by such purchaser, grantee, or successor in interest, and the OWNERS AND DEVELOPERS shall be released from such obligations, provided the conditions of subsection G20.2 of this Agreement have been met.

G20.2 No sale or conveyance shall be effective to release the OWNERS AND DEVELOPERS from the obligations imposed by this Agreement until the purchaser or grantee has posted good and sufficient surety, as determined by the CITY, to secure the performance of all of the OWNERS AND DEVELOPERS' obligations contained in this Agreement and as required by CITY ordinance, policy, or regulation.

G20.3 Any provision contained in this Agreement which provides for payment or reimbursement of money to the CITY, and/or which provides for the dedication or conveyance of property to the CITY, shall survive the expiration or termination of this Agreement.

G21.0 SEVERABILITY.

G21.1 If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

G21.2 The invalidity of any such provision shall not affect any zoning classification for the SUBJECT PROPERTY that has been approved by the CITY pursuant to the provisions of the CITY'S ordinances and regulations. Any change to such zoning classification shall take place only in accordance with applicable statutes and ordinances.

G22.0 NOTICES.

G22.1 Any notice or demand hereunder from one party to another party or to an assignee or successor in interest of either party or from an assignee or successor in interest of either party to another party, or between assignees or successors in interest of either party shall be in writing and shall be deemed duly served if mailed by prepaid registered or certified mail addressed to the parties specified in Section S4.0 or any individual or entity substituted according to subsection G22.2 of this Agreement.

G22.2 The parties, or any assignee or successor in interest, may substitute names and addresses for notices as appropriate.

G23.0 GOVERNING LAW AND VENUE.

G23.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance, and any legal proceeding of any kind arising from this Agreement shall be filed in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

G24.0 FORCE MAJEURE.

G24.1 Subject to the provisions of G24.2 whenever a period of time is provided for in this Agreement for either the CITY or OWNERS AND DEVELOPERS to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, strike or lockout by or against either party's own employees or suppliers, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God.

G24.2 Provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. Except as to a strike or lockout by or against either party's own employees or suppliers, an act or omission shall not be deemed to be "beyond OWNERS AND DEVELOPERS' control" if committed, omitted or caused by OWNERS AND DEVELOPERS, OWNERS AND DEVELOPERS' employees, officers or agents or a subsidiary, affiliate or parent of OWNERS AND DEVELOPERS or by any corporation or other business

entity that holds a controlling interest in OWNERS AND DEVELOPERS, whether held directly or indirectly.

G25.0 ENFORCEABILITY.

G25.1 This Agreement shall be enforceable by any of the parties hereto by any appropriate action at law or in equity to secure the performance of the covenants and terms of this Agreement. In the event that the CITY seeks enforcement of any aspect of this Agreement in a court of competent jurisdiction, and prevails in whole or in part in such action, the OWNERS AND DEVELOPERS shall reimburse the CITY for its costs and expenses, including but not limited to reasonable attorneys' fees (in-house or outside counsel) within thirty (30) days of receipt of an invoice therefor.

G26.0 CHALLENGE TO ANNEXATION.

G26.1 If the annexation of the SUBJECT PROPERTY is challenged in any court of legal jurisdiction, the parties to this Agreement agree to cooperate to defend the validity of said annexation. OWNERS AND DEVELOPERS agree to hold the CITY harmless and to reimburse the CITY for any and all expenses incurred by the CITY for said defense including but not limited to reimbursement for any services of outside legal counsel. If the annexation of the SUBJECT PROPERTY is challenged and is held to be invalid: (a) any real estate taxes which have been paid to the CITY shall not be rebated to the OWNERS AND DEVELOPERS, or its successors and assigns; and (b) the CITY shall enter into a separate written service agreement with the OWNERS AND DEVELOPERS, or its successor and assigns, so as to provide utility service to the SUBJECT PROPERTY in accordance with the general terms of this Agreement to the extent permitted by law.

G27.0 TIMING OF GRANTS OF PROPERTY INTERESTS.

G27.1 When any dedication of right-of-way, grant of easement, or other dedication or grant of property interests to the CITY is provided for in this Agreement, said dedication or grant shall occur prior to, or simultaneously with, the recording of any final plat of subdivision or issuance of any permit, whichever occurs first.

G27.2 Failure to comply with the timing requirements set forth in this Section shall not relieve the OWNERS AND DEVELOPERS of the obligations set forth in this Section, and the provisions of this Section shall survive the expiration or termination of this Agreement.

G28.0 NON-WAIVER OF RIGHTS.

G28.1 No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand compliance with the terms hereof.

G29.0 CAPTIONS AND PARAGRAPH HEADINGS.

G29.1 Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

G30.0 ENTIRE AGREEMENT.

G30.1 This Agreement sets forth all the covenants, conditions and promises between the Parties with regard to the subject matter set forth herein and there are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Agreement.

G31.0 AUTHORIZATIONS.

G31.1 The OWNERS AND DEVELOPERS' authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the OWNERS AND DEVELOPERS to execute this Agreement on its behalf. The Mayor and City Clerk warrant that they have been lawfully authorized to execute this Agreement. The OWNERS AND DEVELOPERS shall deliver to the CITY within ten (10) days of the EFFECTIVE DATE on page 1 of this Agreement copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents which evidence their legal authority to execute this Agreement.

G32.0 SURETY.

G32.1 All public improvements required to be done by the OWNERS AND DEVELOPERS for any phase of the SUBJECT PROPERTY shall be secured by a cash deposit or Letter of Credit in a form approved by the City Attorney, in an amount approved by the City Engineer, and in compliance with the Naperville Municipal Code. This provision shall apply whether or not a Letter of Credit is specified for each improvement. As to any surety or maintenance surety provided by the OWNERS AND DEVELOPERS to the CITY for public improvements related to development of the SUBJECT PROPERTY, OWNERS AND DEVELOPERS agree that: (1) at no time shall the CITY be liable for attorneys' fees with respect

thereto; (2) OWNERS AND DEVELOPERS 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. Notwithstanding provision of said surety, until the public improvements have been accepted by the CITY, the OWNERS AND DEVELOPERS 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. The provisions set forth in this Section G32 shall survive the expiration or termination of this Agreement.

G33.0 ACCEPTANCE OF PUBLIC IMPROVEMENTS.

G33.1 Subject to approval by the City Engineer, the CITY shall accept public improvements installed by the OWNERS AND DEVELOPERS on the SUBJECT PROPERTY, or within the adjacent public right-of-way, pursuant to the process set forth in Section 7-1-7 of the Naperville Municipal Code. Upon CITY acceptance thereof, the OWNERS AND DEVELOPERS shall post a cash deposit or letter of credit in a form and amount approved by the City guaranteeing said improvements against defects in materials or workmanship in the amount of ten percent (10%) of the estimated cost of said improvement to be effective for a period of one year from the date of acceptance.

G34.0 EXHIBITS INCORPORATED.

G34.1 All exhibits attached or referenced herein are incorporated herein by reference and made part hereof.

G35.0 AMBIGUITY.

G35.1 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.

G36.0 RECAPTURE AGREEMENTS.

G36.1 If, pursuant to the terms of this Agreement, the OWNERS AND DEVELOPERS install improvements, including but not limited to water distribution system improvements, sanitary sewer collection system improvements, storm sewer system improvements, roadway improvements, or other improvements (hereinafter "**Improvements**")

which the OWNERS AND DEVELOPERS and the CITY reasonably determine will benefit properties other than the SUBJECT PROPERTY, the OWNERS AND DEVELOPERS may submit a request to the City Engineer for the City to enter into a recapture agreement (“**Recapture Agreement**”). The OWNERS AND DEVELOPERS’ request must be accompanied by a draft of the proposed Recapture Agreement and documentation, to the satisfaction of the City Engineer, clearly demonstrating the “as built” costs of the Improvements for which recapture is sought. The proposed Recapture Agreement shall identify the benefitting properties and recapture amounts, which shall be subject to approval of the City Engineer. Subject to approval of the proposed Recapture Agreement by the City Engineer, approval of the form of the Recapture Agreement by the City Attorney, and any notice to be given to the benefitting property owners, the matter shall be scheduled for consideration by the Naperville City Council. If an ordinance approving the Recapture Agreement is passed by City Council, the Recapture Agreement shall be recorded against the title of the benefitting properties identified in the Recapture Agreement.

G36.1.1 If a proposed Recapture Agreement and supporting documentation are not provided to the City Engineer within twelve (12) months from completion of the Improvements by the OWNERS AND DEVELOPERS and approval of said Improvements by the City Engineer or the City Engineer’s designee, or within such other timeframe as may be agreed to in writing by the City Engineer, the CITY shall no longer have any obligation to enter into a recapture agreement for Improvements hereunder.

G37.0 JOINT LIABILITY.

G37.1 OWNERS AND DEVELOPERS shall be jointly and severally liable for the obligations and responsibilities set forth and referenced herein.

G38.0 DESIGNEES INCLUDED.

G38.1 Whenever the title of a position of a City employee or official is used in this Agreement relative to an action being taken or an approval being given (e.g. Zoning Administrator, City Engineer, Director of Department of Public Utilities), the individual’s designee shall be automatically be included therein.

**SPECIAL CONDITIONS FOR THE ANNEXATION OF
THE SUBJECT PROPERTY**

To the extent that there is any inconsistency between the terms or conditions of the following Special Conditions and the General Conditions above, the terms and conditions set forth in the Special Conditions of this Agreement shall prevail. To the extent that provisions in the Special and General Conditions are not inconsistent, they shall be read together.

S1.0 ANNEXATION AND ZONING.

S1.1 The Zoning Classification for the SUBJECT PROPERTY determined in accordance with Title 6 of the Naperville Municipal Code shall be R1 (Low-Density Single-Family Residence District).

S1.2 A plat of annexation prepared by Civil and Environmental Consultants, Inc., dated March 25, 2022, last revised June 10, 2022, which conforms with the statutory requirements is attached hereto and incorporated herein by reference as **EXHIBIT B**.

S2.0 ANNEXATION FEES.

S2.1 The Annexation Fee calculated in accordance with Section 1-9E-1 of the Naperville Municipal Code for the SUBJECT PROPERTY is four thousand dollars (\$4,000.00), which has been paid by the OWNERS AND DEVELOPERS.

S3.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.

S3.1 OWNERS AND DEVELOPERS shall pay all Recapture Fees pursuant to Ordinance 18-015 (recorded as Document No. R2018-035072) as specified as follows prior to recordation of this Agreement and the Ordinance annexing the SUBJECT PROPERTY:

- i. Water Recapture Fee: \$7,993.52
- ii. Sewer Recapture Fee: \$4,182.96
- iii. Storm Sewer Recapture Fee: \$4,303.46
- iv. Engineering Recapture Fee: \$3,296.81
- v. The Recapture Fees listed above in subromanettes i-iv include interest from the date of completion of the described improvements to June 21, 2022 computed using the Engineering News Record Construction Cost Index. Additional interest for the period from

June 21, 2022 to the date said Fees are paid by the OWNERS AND DEVELOPERS shall be added to said Fees which shall also be computed using Engineering News Record Construction Cost Index.

S3.2 Notwithstanding the provisions of Section G11.3 herein, since the SUBJECT PROPERTY is located within the Naperville Fire Protection District, and prior to annexation was served by the Naperville Fire Department, the OWNERS AND DEVELOPERS has no obligation to make payment pursuant to 70 ILCS 705/20(e)(1)-(5).

S4.0 ADDRESSES FOR NOTICES REQUIRED BY THIS AGREEMENT.

IF TO THE CITY:

City Clerk/Community Services Department
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

WITH COPIES TO:

City Attorney, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

IF TO THE OWNERS AND DEVELOPERS:

Kevin E. and Catherine S. Madden
1411 Larsen Lane
Naperville, IL 60563

WITH COPIES TO:

Kevin M. Gensler, Attorney at Law
Dommermuth, Cobine, West, Gensler, Philipchuck, and Corrigan, Ltd.
111 East Jefferson Avenue, Suite 200
Naperville, Illinois 60540

S5.0 FIRE CODES AND REGULATIONS.

S5.1 The provisions of Section G14.0 this Agreement notwithstanding, any amendments to the CITY'S Building, Fire, or Life Safety Codes or regulations approved and enacted after the EFFECTIVE DATE of this Agreement shall be applicable to the SUBJECT PROPERTY without exception.

S6.0 EMERGENCY ACCESS.

S6.1 OWNERS AND DEVELOPERS agree to maintain sufficient access for emergency vehicles when construction begins to the satisfaction of the Fire Marshall of the City of Naperville.

S7.0 SCHOOL AND PARK DONATIONS.

S7.1 The SUBJECT PROPERTY was previously improved with a single-family house, which has been demolished. The OWNERS AND DEVELOPERS seek to construct a new single-family house on the SUBJECT PROPERTY. As no additional buildable lot is contemplated as part of this annexation request, no school and park donations will be required for the SUBJECT PROPERTY.

S8.0 SIDEWALK.

S8.1 The OWNERS AND DEVELOPERS agree to install public sidewalk, at the OWNERS AND DEVELOPERS' sole cost, across the Tuthill Road frontage of the SUBJECT PROPERTY prior to issuance of the final occupancy permit or within three (3) years after annexation of the SUBJECT PROPERTY, whichever is sooner. An extension of this timeframe may be granted in writing at the discretion of the City Engineer. This provision shall survive the expiration or termination of this Agreement.

S9.0 FUTURE PAVEMENT RESTORATION FEE.

S9.1 The CITY is scheduled to resurface Tuthill Road in front of the SUBJECT PROPERTY in 2023, which schedule is tentative and may be postponed dependent upon road conditions and available funding. If, as a result of construction related to the SUBJECT PROPERTY, pavement patches need to be installed on Tuthill Road, OWNERS AND DEVELOPERS will be required to pay a future pavement restoration fee in accord with the provisions of Section 9-1J-5 of the Naperville Municipal Code.

S9.2 The provisions of this Section S9 and each subsection hereof shall survive the expiration or termination of this Agreement.

S10.0 TUTHILL ROAD IMPROVEMENTS.

S10.1 Except for the City Costs set forth in S12.3 below, OWNERS AND DEVELOPERS shall, at their sole cost, design and improve the western half of Tuthill Road from the exiting curb in front of the neighboring property at 1143 Tuthill Road (PIN: 08-08-303-011)

to the north property line of the SUBJECT PROPERTY, which improvements shall include, but not be limited to, the following (hereinafter referred to as “**Tuthill Road Improvements**”):

- i. Installation of storm sewer, curbs and gutters (“**Storm Sewer Improvements**”);
and
- ii. Installation of one (1) streetlight near north property line of the SUBJECT PROPERTY and associated electrical connections (“**Streetlight Improvements**”).

S10.2 Design and engineering for the Tuthill Road Improvements shall be included in the final engineering plans for the SUBJECT PROPERTY and shall be subject to the review and approval of the City Engineer prior to issuance of a site permit or a building permit for the SUBJECT PROPERTY. The Tuthill Road Improvements shall be fully completed by the OWNERS AND DEVELOPERS and approved by the City Engineer prior to issuance of any occupancy permit for the SUBJECT PROPERTY. If the Tuthill Road Improvements are not completed prior to the commencement of the Tuthill Road resurfacing project by the CITY, OWNER AND DEVELOPER shall be subject to the requirements of Section S9.0.

S10.3 Subject to the provisions set forth and referenced herein, the CITY agrees to reimburse OWNERS AND DEVELOPERS for the actual costs of the portion of the Storm Sewer Improvements that directly abut the neighboring property located at 1143 Tuthill Road (hereinafter “**City Costs**”). City Costs shall include the actual costs of installation of said portion of the Storm Sewer Improvements and shall not include any cost for the design and engineering of the Storm Sewer Improvements. Reimbursement of the City Costs shall be contingent upon and subject to compliance by the OWNERS AND DEVELOPERS with the requirements of Section 7-3-6 of the Naperville Municipal Code.

S10.3.1 Because construction of the Storm Sewer Improvements as provided herein constitutes construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* (“the Act”), OWNERS AND DEVELOPERS shall require that all contractors and subcontractors who perform the Storm Sewer Improvements comply with the provisions of said Act, including but not limited to payment of laborers, workers and mechanics no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in DuPage County and requiring that such contractors and subcontractors comply with all wage, notice and record keeping requirements set forth in the Act. For information regarding current prevailing wage rates,

refer to the Illinois Department of Labor's website at:
<http://www.state.il.us/agency/idol/rates/rates.HTM>.

S10.4 The Streetlight Improvements, to be located near the north property line of the SUBJECT PROPERTY, may benefit the adjacent properties located at 5S568 Tuthill Road (PIN: 08-08-303-009), 5S571 Tuthill Road (PIN: 08-08-401-038) and 5S575 Tuthill Road (PIN:08-08-401-057). Within twelve (12) months of completion of construction of the Streetlight Improvements by the OWNERS AND DEVELOPERS, and approval of said Streetlight Improvements by the City Engineer or the City Engineer's designee, OWNERS AND DEVELOPERS may submit a written request to the City Engineer and the City Attorney to enter into a recapture agreement (specifying that the OWNERS AND DEVELOPERS may recapture twenty-five percent (25%) of the actual as-built cost of the Streetlight Improvements from each of the three properties specified herein) in compliance with the provisions set forth and referenced in this Section 10, and each subsection hereof, and in accordance with the provisions set forth in G36.0 of this Agreement.

S10.5 The provisions of this Section 10 and each subsection hereof shall survive the expiration or termination of this Agreement.

S11.0 FINANCIAL SURETY.

S11.1 OWNERS AND DEVELOPERS shall submit an engineer's cost estimate for the Tuthill Road Improvements (S10.0) and the public sidewalk (S8.0) (hereinafter referred to as "**Required Work**") concurrent with the submission of the final engineering plans for the SUBJECT PROPERTY, which shall be subject to the City Engineer's review and approval prior to issuance of any site permit or building permit for the SUBJECT PROPERTY. OWNERS AND DEVELOPERS 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 110% of the approved engineer's cost estimate which guarantees the completion of the Required Work within the timeframes set forth herein. Said surety shall be received and approved by the City Attorney prior to issuance of a site permit or a building permit for the SUBJECT PROPERTY. Notwithstanding provision of said surety, until the Required Work has been approved by the City Engineer, OWNERS AND DEVELOPERS shall remain obligated for completion of the 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 OWNERS AND DEVELOPERS to the City hereunder, the OWNERS AND DEVELOPERS agree that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) OWNERS AND DEVELOPERS 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.

/SIGNATURES ON FOLLOWING PAGE/

IN WITNESS WHEREOF, the parties set their hands and seals as of the EFFECTIVE DATE set forth on page 1 hereof.

CITY OF NAPERVILLE

By: _____ Attest
Steve Chirico By: _____
Mayor Pam Gallahue, Ph.D.
City Clerk

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by Steve Chirico, Mayor, and Pam Gallahue, Ph.D. City Clerk, this _____ day of _____, 2022.

Notary Public

-seal-

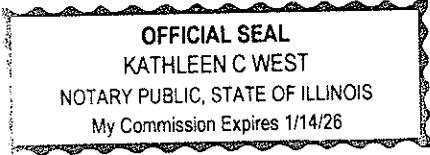
OWNER AND DEVELOPER

Kevin E. Madden, 1411 Larsen Lane, Naperville, IL 60563

By: [Signature]
[name] Kevin E. Madden
[title]

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by Kevin E. Madden
_____, and _____, this 10th
day of June, 2022.



[Signature: Kathleen C. West]
Notary Public

-seal-

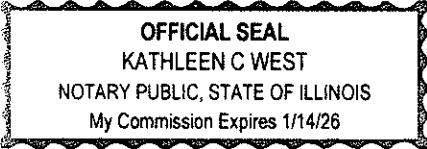
OWNER AND DEVELOPER

Catherine S. Madden, 1411 Larsen Lane, Naperville, IL 60563

By: Catherine S. Madden
[name] Catherine S. Madden
[title]

State of Illinois)
County of DuPage)

The foregoing instrument was acknowledged before me by Catherine S. Madden, and _____, this 10th day of June, 2022.



Kathleen C. West
Notary Public

-seal-

This instrument was prepared by The City of Naperville, 400 S. Eagle Street, Naperville, Illinois, 60540.

LEGAL DESCRIPTION

LOT 6 IN FISCHER'S RESUBDIVISION NO. 2 OF PART OF BLOCK 5 IN ARTHUR T. MCINTOSH AND COMPANY'S EDGEWOOD, BEING A SUBDIVISION OF PART OF SECTIONS 8 AND 9, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF FISCHER'S RESUBDIVISION NO. 2, AFORESAID, RECORDED JULY 12, 1950 AS DOCUMENT 597984, IN DUPAGE COUNTY, ILLINOIS.

AND ALSO,

THAT PART OF TUTHILL ROAD HERETOFORE DEDICATED PER DOCUMENT 279197, RECORDED MAY 8, 1929, BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6; THENCE N87°45'04"E, 79.03 FEET TO THE EASTERLY RIGHT OF WAY OF SAID TUTHILL ROAD; THENCE S02°14'56"E ALONG SAID RIGHT OF WAY LINE, 12.58 FEET; THENCE S87°48'40"W, 79.04 FEET TO THE WESTERLY RIGHT OF WAY OF SAID TUTHILL ROAD AND EAST LINE OF SAID LOT 6; THENCE N02°11'20"W, 12.50 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.

ADDRESS: 5S578 TUTHILL ROAD, NAPERVILLE, ILLINOIS 60563

PIN: 08-08-303-010

