

Created: 9/23/2019
Last revised: 10/29/2019

**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**

ANNEXATION AGREEMENT
FOR 77TH STREET PROJECT

THIS ANNEXATION AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 20 ____ (*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 Oak Creek Capital Partners, LLC with offices at PO Box 5726, Naperville, IL 60567 (hereinafter referred to as the “**OWNER AND DEVELOPER**”).

RECITALS

WHEREAS, the **OWNER AND DEVELOPER** is the owner 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

WHEREAS, the **OWNER AND DEVELOPER** has signed and filed a Petition for Annexation and Zoning with the Naperville City Clerk for the **SUBJECT PROPERTY**; and

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

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

WHEREAS, the OWNER AND DEVELOPER 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

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 R1A (Low Density Single-Family Residence District) 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

WHEREAS, the CITY and the OWNER AND DEVELOPER 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 Within sixty (60) days after the execution of this Agreement, or within thirty (30) days of the payment of all applicable fees and submittal of all documents necessary for recording of this Agreement, whichever is later, the CITY shall enact and adopt ordinances for the annexing and zoning the SUBJECT PROPERTY in accordance with Section S1.0 of this Agreement.

G2.2 If this Agreement, or the ordinance approving it, are not recorded with the office of the Recorder in which the SUBJECT PROPERTY is located within one (1) year of their approval by the Naperville City Council, this Agreement shall be null and void without any further action by the CITY. The OWNER AND DEVELOPER 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, this Agreement.

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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER have filed concurrently herewith a petition executed by OWNER AND DEVELOPER 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 The OWNER AND DEVELOPER shall, at their sole cost and expense, construct and install, or pay the cost of the installation of sidewalks along the entire frontage of collector and arterial rights-of-way adjacent to the SUBJECT PROPERTY in accordance with the City of Naperville Municipal Code, as amended from time to time.

G6.2 At the time of Final Plat approval for those portions of the SUBJECT PROPERTY adjacent to the collector and/or arterial rights-of-way the OWNER AND DEVELOPER shall, at the sole discretion of the CITY,

1. construct sidewalks along said roadway or
2. pay to the CITY the estimated costs of the construction of the sidewalks along said roadways.

Upon payment, OWNER AND DEVELOPER shall have no further obligation to construct said sidewalk.

G7.0 UTILITY LINES AND EASEMENTS.

G7.1 The OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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, OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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, OWNER AND DEVELOPER 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 OWNER AND DEVELOPER, and anything to the contrary contained herein notwithstanding, the OWNER AND DEVELOPER 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 specified in Section S6.0 of this Agreement.

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 specified in Section S7.0 of this Agreement.

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 OWNER nor the DEVELOPER 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 OWNER AND DEVELOPER 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 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER shall survive the expiration or termination of this Agreement.

G20.0 CONTINUING RESPONSIBILITY.

G20.1 If the OWNER AND DEVELOPER sells or conveys all or any portion of the SUBJECT PROPERTY during the term of this Agreement, all of the OWNER AND DEVELOPER'S obligations specified in this Agreement shall devolve upon and be assumed by such purchaser, grantee, or successor in interest, and the OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER'S 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER'S control" if committed, omitted or caused by OWNER AND DEVELOPER, OWNER AND DEVELOPER'S employees, officers or agents or a subsidiary, affiliate or parent of OWNER AND DEVELOPER or by any corporation or other business entity that holds a controlling interest in OWNER AND DEVELOPER, 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 OWNER AND DEVELOPER 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. OWNER AND DEVELOPER agrees 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 OWNER AND DEVELOPER, or its successors and assigns; and (b) the CITY shall enter into a separate written service agreement with the OWNER AND DEVELOPER, 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 OWNER AND DEVELOPER 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 OWNER AND DEVELOPER'S authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the OWNER AND DEVELOPER to execute this Agreement on its behalf. The Mayor and City Clerk warrant that they have been lawfully authorized to execute this Agreement. The OWNER AND DEVELOPER 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 OWNER AND DEVELOPER 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. 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.

G33.0 ACCEPTANCE OF PUBLIC IMPROVEMENTS.

G33.1 Subject to approval by the City Engineer, the CITY shall accept public improvements installed by the OWNER AND DEVELOPER 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 OWNER AND DEVELOPER shall post a cash deposit or maintenance 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 OWNER AND DEVELOPER installs 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 OWNER AND DEVELOPER and the CITY reasonably determine will benefit properties other than the SUBJECT PROPERTY, the OWNER AND DEVELOPER may submit a request to the City Engineer for the City to enter into a recapture agreement (“Recapture Agreement”). The OWNER AND DEVELOPER’S 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, or 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.

SPECIAL CONDITIONS FOR THE ANNEXATION OF
SUBJECT PROPERTY

To the extent that there is any inconsistency between the terms or conditions of the following Special Conditions and the General Conditions, 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 R1A (Low Density Single-Family Residence District).

S1.2 A plat of annexation prepared by CEMCON, Ltd., dated June 20, 2019, last revised August 15, 2019, 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 \$550, which has been paid by the OWNER AND DEVELOPER.

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

S3.1 OWNER AND DEVELOPER shall pay any and all existing Utility Rebates, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified as follows:

- i. Water Recapture Fee: \$7,500 (150' of frontage on 77th Street at \$50 per linear foot)
Due: Prior to recordation of this Agreement and recordation of the Ordinance annexing the SUBJECT PROPERTY.
- ii. Wastewater Recapture Fee: \$12,980 (324.5' of frontage on 77th Street at \$40 per linear foot)

Due: Prior to recordation of this Agreement and recordation of the Ordinance annexing the SUBJECT PROPERTY.

S3.2 The amount to be paid to the Lisle-Woodridge Fire Protection District pursuant to the provisions of 70 ILCS 705/20(e)(1)-(5) as a result of the annexation of the SUBJECT PROPERTY to the CITY shall be \$4,723.59. Said amount shall be paid in full by the OWNER AND DEVELOPER to the CITY prior to recordation of the ordinance approving annexation of the Subject Property and prior to recordation of this Agreement. Notwithstanding the forgoing, in the event that the amount due to the Lisle-Woodridge Fire Protection District exceeds \$4,723.59, the OWNER AND DEVELOPER shall be responsible for payment of any additional amount within thirty (30) days of notice from the CITY.

S4.0 ADDRESSES FOR NOTICES REQUIRED BY THIS AGREEMENT.

IF TO THE CITY:

City Clerk, 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 OWNER AND DEVELOPER:

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

WITH COPIES TO:

Len Monson
Kuhn, Heap & Monson
552 S. Washington St., Suite 100

Naperville, IL 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 OWNER AND DEVELOPER agrees to construct, at OWNER AND DEVELOPER'S cost, two points of access for emergency vehicles when building construction begins; said accesses will be maintained until the roadways are completed. Said emergency access shall consist of a hard surface with binder course and a minimum structural number of 2.36.

S7.0 PLAT APPROVAL.

S7.1 Upon approval of a preliminary plat of subdivision for the SUBJECT PROPERTY by the City Council, such approval shall be valid for a period of five (5) years from the EFFECTIVE DATE of this Agreement unless a final plat of subdivision is recorded prior to the expiration of said five (5) year period. All final plats and supporting data shall be submitted in accordance with said development and Subdivision Control provisions.

S8.0 REQUIRED RIGHT-OF-WAY DEDICATION.

S8.1 The OWNER AND DEVELOPER agrees to dedicate to the CITY, at no cost to the CITY, the following rights-of-way adjacent to the SUBJECT PROPERTY as described below and depicted on the Preliminary Plat of Subdivision attached hereto as **EXHIBIT C**. Said dedications shall be made part of the final subdivision plat for the SUBJECT PROPERTY.

- i. **Wehrli Road:** Fifty foot (50') wide right-of-way on the east side of the roadway.
- ii. **Cut Corner:** A thirty foot (30') cut corner at the northeast corner of Wehrli Road and 77th Street.

S9.0 SCHOOL AND PARK DONATIONS.

S9.1 OWNER AND DEVELOPER agrees to abide by the school and park donation provisions set forth in Title 7 of the Naperville Municipal Code as amended from time to time. All school and park donation requirements shall be met by the appropriate land donation or cash-in-lieu payments as are assessed at the time of Final Subdivision Plat

approval. OWNER AND DEVELOPER acknowledge that the school and park donation established herein is done so pursuant to City of Naperville Ordinance and Code provisions and agrees that payment of said amount(s) shall not be paid under protest.

S9.2 In the event that the OWNER AND DEVELOPER elects to pay the required school and park donation cash-in-lieu fee 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, as amended from time to time, the OWNER AND DEVELOPER shall receive a school and park donation credit for one (1) three-bedroom single-family residence that was previously located on the SUBJECT PROPERTY and demolished around 2010. In the event that the OWNER AND DEVELOPER elects to pay the required school and park donation cash-in-lieu pursuant to the “Per Permit Payment” provisions set forth in Section 7-3-5:5.2.2 of the Naperville Municipal Code, no school and park donation credit shall be given for the SUBJECT PROPERTY if the OWNER AND DEVELOPER elects chooses to pay for the required school and donation prior to issuance of each building permit.

S10.0 SIDEWALKS.

S10.1 The OWNER AND DEVELOPER agrees to install a five-foot (5’) wide public sidewalk, at the OWNER AND DEVELOPER’S sole cost, across the frontage of the SUBJECT PROPERTY on Wehrli Road. Said sidewalk shall be installed by the OWNER AND DEVELOPER and approved by the City Engineer prior to issuance of the first final occupancy permit for the SUBJECT PROPERTY or within three (3) years after the EFFECTIVE DATE of this Agreement, whichever occurs first. Said timeframe may be modified by written approval of the City Engineer.

S10.2 The OWNER AND DEVELOPER agrees to install five-foot (5’) wide public sidewalks, at the OWNER AND DEVELOPER’S sole cost, across the frontage of the SUBJECT PROPERTY on 77th Street, Mya Court and Elijah Drive. Said sidewalks shall be installed by the OWNER AND DEVELOPER and approved by the City Engineer prior to issuance of the final occupancy permit for each residential lot of the SUBJECT PROPERTY or within three (3) years after the EFFECTIVE DATE of this Agreement, whichever is sooner. In addition, the sidewalks along Mya Court and 77th Street shall be extended easterly to meet the existing sidewalks at the OWNER AND DEVELOPER’S sole cost. Said extensions shall be installed by the OWNER AND DEVELOPER and approved by the City Engineer prior to issuance of a final occupancy

permit for the residential lot adjacent to said extensions (i.e., Lot 1 or Lot 7 as depicted on **EXHIBIT C**) or within three (3) years after the EFFECTIVE DATE of this Agreement, whichever is sooner. Said timeframes may be modified by written approval of the City Engineer.

S11.0 PARKWAY TREES.

S11.1 Prior to issuance of a building permit for each residential lot within the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall pay a fee-in-lieu of the required parkway trees for the CITY to plant parkway trees adjacent to each lot in compliance with Section 5-10-3:3 of the Municipal Code, as amended from time to time, as directed by the Director of Public Works Department. For lots abutting more than one public street, said fee shall be assessed for all public streets adjacent to the lot.

S12.0 77th STREET IMPROVEMENTS.

S12.1 The OWNER AND DEVELOPER agrees to, at its sole cost, design and improve 77th Street adjacent to the SUBJECT PROPERTY, which improvements shall include, but not be limited to, the following (hereinafter referred to as “77th Street Improvements”):

- i. Pavement coring and soil boring,
- ii. Resurfacing of the full width of the street pavement,
- iii. Street widening to match the standards for a 37’ wide connector street,
- iv. Pavement striping, and
- v. Installation of storm sewer, curbs and gutters, and street lights.

S12.2 Design and engineering for the 77th Street 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. The 77th Street Improvements shall be fully completed by the OWNER AND DEVELOPER and approved by the City Engineer, prior to issuance of the first building permit for the SUBJECT PROPERTY. In the event said 77th Street Improvements are not completed as set forth above, the CITY shall have the right to withhold issuance of any further building and occupancy permits for the SUBJECT PROPERTY.

S13.0 PARK DISTRICT ANNEXATION

S13.1 Notwithstanding the provisions of Section G4.0, the SUBJECT PROPERTY is currently within the boundary of the Naperville Park District; annexation to the Park District is not required.

S14.0 RECORDATION

S14.1 This Agreement and the Ordinance annexing the SUBJECT PROPERTY shall be recorded with the DuPage County Recorder prior to City Council's consideration of a final subdivision plat for the SUBJECT PROPERTY.

S15.0 EFFECTIVE DATE

S15.1 The effective date of this Agreement shall be the date of recordation with the DuPage County Recorder.

S16.0 SURVIVAL

S16.1 The following provisions shall survive the expiration or termination of this Agreement: G11.3, G12.2, G20.3, G21.1, G21.2, G23.1, G27.1, G27.2, S9.1, S9.2, S10.1, S10.2, S11.1, and S12.1.

~ 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: _____
Steve Chirico
Mayor

Attest
By: _____
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 _____, 20__.

Notary Public

-seal-

OWNER AND DEVELOPER

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

By: _____
[name]
[title]

Attest
By: _____
[name]
[title]

State of Illinois)
)
County of _____)

The foregoing instrument was acknowledged before me by _____,
_____, and _____, this _____
day of _____, 20__.

Notary Public

-seal-

DEVELOPER

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

By: [Signature]
[name] John McHale
[title] Managing Member

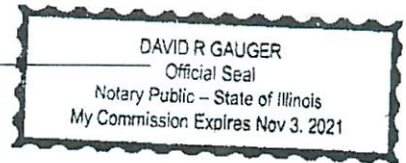
Attest
By: [Signature]
[name] LEONARD M. MONSON
[title] ATTORNEY

State of Illinois)
County of DU PAGE)

The foregoing instrument was acknowledged before me by JOHN McHALE,
and _____, this 29TH
day of OCTOBER, 2019.

[Signature]

Notary Public



-seal-

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

LEGAL DESCRIPTION

LOT 2 OF WEHRLI'S ASSESSMENT PLAT OF THE SOUTH HALF OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO SAID ASSESSMENT PLAT RECORDED ON SEPTEMBER 22, 1953, AS DOCUMENT 695860 IN DUPAGE COUNTY, ILLINOIS.

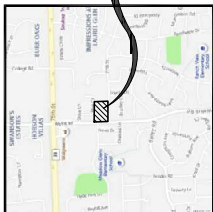
COMMONLY KNOWN AS: 24W560 77TH STREET, NAPERVILLE, IL 60565

PIN: 08-28-301-009

PLAT OF ANNEXATION

NAPERVILLE, IL

OF PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 38 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS



STREET LOCATION

CITY COUNCIL CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE)
 APPROVED AND ACCEPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, ILLINOIS, AT A MEETING HELD THE _____ DAY OF _____, A.D., 2019.

BY: _____ ATTEST: _____ CITY CLERK

DUPAGE COUNTY RECORDER'S CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE)
 THIS INSTRUMENT WAS FILED FOR RECORD IN THE RECORDERS' OFFICE OF DUPAGE COUNTY, ILLINOIS, ON THE _____ DAY OF _____, A.D., 2019, AT _____ O'CLOCK _____ A.M.

RECORDER OF DEEDS

EXHIBIT B



PARCEL INDEX NUMBER
 08-25-301-009
 VACANT LOTS ADJACENT TO WEHRLI ROAD AND 77TH STREET, NAPERVILLE, ILLINOIS

- LEGEND**
- LIMITS OF ANNEXATION (Heavy Solid Line)
 - ADJACENT PROPERTY LINE (Thin Solid Line)
 - QUARTER SECTION LINE (Light Solid Line)
 - QUARTER SECTION LINE (Dashed Line)
 - QUARTER SECTION LINE (Triple Dashed Line)
 - CENTER LINE (Short Dash Line)
 - CENTER LINE (Long Dash Line)
 - EXISTING NAPERVILLE PARK DISTRICT CORPORATE LIMITS
 - CONTROL MONUMENT
 - RIGHT OF WAY
 - DOCUMENT
 - SECTION

SURVEYOR'S NOTES

- DIMENSIONS ENGAGED IN () INDICATE RECORD OR FIELD DATA. ALL OTHER DIMENSIONS ARE MEASURED OR MEASURED EQUAL RECORD.
- THERE ARE NO ELECTORS THAT RESIDE ON THE PROPERTY ANNEXED HEREBY.
- THERE ARE NO HABITABLE STRUCTURES ON THE PROPERTY ANNEXED HEREBY.
- THE BOUNDARIES OF THIS PROPERTY ARE BASED UPON THE NORTH LINE OF SAID PROPERTY BEING A SUBDIVISION OF SAID PROPERTY. MEASUREMENTS WERE DERIVED FROM CITY OF NAPERVILLE MONUMENT AND SECTION CORNER MONUMENT NOTED HEREON.

PREPARED FOR DEVELOPER/OWNER:
OAK CREEK CAPITAL PARTNERS, LLC
 P.O. BOX 176
 ST. CHARLES, IL 60174
 (847) 514-9144

REGISTERED P.E.
CEMCON, Ltd.
 Consulting Engineers, Land Surveyors & Planners
 62002-9875 Ph. 630.822.2100
 www.cemcon.com
 FILE NAME: ANNEX
 JOB NO. / PLS NO. 782-093
 COMPLETION DATE: 06-20-19
 REVISED 08-15-19 V.A.S. PER COMMENT LETTER DATED 07-17-19
PLAT OF ANNEXATION - 0178093
PROJECT NUMBER 19-10-180987
 SHEET 1 OF 3

151	152	153	154	155	156	157	158
UNIVERSITY HEIGHTS SUBDIVISION PER DOC. R78-107250							
77TH STREET HERETOFORE DEDICATED PER DOC. R78-107250							
IRON PIPE							

PARCEL DESCRIPTIONS

LOT 2 OF WEHRLI'S ASSESSMENT PLAT OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 38 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO SAID ASSESSMENT PLAT RECORDED ON SEPTEMBER 22, 1953, AS DOCUMENT 695860 IN DUPAGE COUNTY, ILLINOIS.

SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE)
 THIS IS TO CERTIFY THAT I, PETER A. BLASSER, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HAVE PREPARED THIS PLAT FOR THE PURPOSE OF ANNEXATION TO THE CITY OF NAPERVILLE, ILLINOIS, ON THE _____ DAY OF _____, A.D., 2019.

PETER A. BLASSER
 ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3072
 PROFESSIONAL DESIGN FIRM LICENSE NUMBER 184-002937
 EXPIRES APRIL 30, 2021

