

Created: 12/17/2018
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**PROPERTY ADDRESS:
5S275 AND 5S311 NAPERVILLE-WHEATON ROAD
NAPERVILLE, IL 60563**

**PINS:
08-08-106-009
08-08-106-010**

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

ANNEXATION AGREEMENT
FOR LEIGH SUBDIVISION

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 Naperville Wheaton LLC, an Illinois limited liability company, with offices at 127 Aurora Avenue, Naperville, IL 60540 (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 proposes 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 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 R3A – Medium Density Multifamily 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

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 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 then-current 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, 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 EFFECTIVE DATE 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 its 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 and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest, assignees, heirs, executors, or lessees, 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 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 termination or expiration 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 termination or expiration 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 this annexation. OWNER AND DEVELOPER 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 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 reasonably determines 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 benefiting properties identified in the Recapture Agreement.

G36.2 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 R3A - Medium Density Multifamily Residence District.

S1.2 A plat of annexation prepared by Roake and Associates, Inc., dated October 2, 2018, last revised November 5, 2018, 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 \$500, 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 There are currently no Utility Rebates, Special Connection Fees, Recapture Fees, Special Assessments or Special Service Areas Taxes applicable to the SUBJECT PROPERTY.

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 OWNER AND DEVELOPER 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, 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:

Attn: Vince Rosanova, Attorney
Naperville Wheaton, LLC
127 Aurora Avenue
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 maintain, at OWNER AND DEVELOPER'S cost, two points of access for emergency vehicles when construction begins

S7.0 REQUIRED RIGHT-OF-WAY DEDICATION.

S7.1 The OWNER AND DEVELOPER agrees to dedicate to the CITY, at no cost to the CITY, seven-foot (7') wide additional right-of-way on the east side of Naperville-Wheaton Road adjacent to the SUBJECT PROPERTY as depicted on the Preliminary Plat of Subdivision, prepared by Roake and Associates, Inc., dated October 2, 2018, last revised

November 29, 2018, attached hereto as **EXHIBIT B**. Said dedication shall be made part of the final subdivision plat for the SUBJECT PROPERTY.

S8.0 SCHOOL AND PARK DONATIONS.

S8.1 OWNER AND DEVELOPER intends to develop four (4) single family homes on the SUBJECT PROPERTY. In connection with the development of the SUBJECT PROPERTY, OWNER AND DEVELOPER shall pay school and park donations to the CITY as required by the provisions of Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code, as amended from time to time. All school and park donation requirements for the SUBJECT PROPERTY shall be met by the appropriate cash-in-lieu contribution as set forth in Section 7-3-5 of the Municipal Code, as amended from time to time. OWNER AND DEVELOPER acknowledges that the school and park donations shall be paid pursuant to the Naperville Municipal Code provisions then in effect and agrees that payment of said amounts shall not be paid under protest or otherwise objected to.

S8.2 In the event that the OWNER AND DEVELOPER elects to pay the required school and park donation cash-in-lieu 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 two (2) three-bedroom single-family residences, one of which is currently located on the SUBJECT PROPERTY and the other was previously demolished in 2017. 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.

S9.0 EXISTING STRUCTURES.

S9.1 All existing structures currently located on the SUBJECT PROPERTY shall be demolished prior to recordation of this Agreement. The OWNER AND DEVELOPER shall provide written notice to the City Attorney and the City’s Zoning Administrator within seven (7) days of completion of the demolition.

S10.0 SIDEWALKS.

S10.1 The OWNER AND DEVELOPER shall install public sidewalk, at the OWNER AND DEVELOPER’S sole cost, across the Naperville-Wheaton Road frontage of the

SUBJECT PROPERTY prior to issuance of the final occupancy permit or three (3) years after annexation of the SUBJECT PROPERTY or whichever is sooner. An extension of this timeframe may be granted in writing at the discretion of the City Engineer.

S10.2 In order to construct the Water Main Improvements as set forth in Section S12.0 below, the OWNER AND DEVELOPER is required to remove the existing sidewalk along the west side of Naperville-Wheaton Road generally located between the south property line of the SUBJECT PROPERTY and Iroquois Avenue. Subject to the cost sharing provisions set forth in Section 12.0 below, the OWNER AND DEVELOPER shall reconstruct the sidewalk and restore the parkway after the water main is installed, which improvements shall be approved by the City Engineer prior to issuance of any temporary or final occupancy permit for the SUBJECT PROPERTY.

S11.0 STORM SEWER IMPROVEMENTS TO NAPERVILLE-WHEATON ROAD.

S11.1 OWNER and DEVELOPER shall, at OWNER AND DEVELOPER'S sole cost, design and construct a storm sewer main, commencing at an existing storm sewer main near the south property line of the property at 5S331 Naperville-Wheaton Road, continuing along the east side of Naperville-Wheaton Road, and connecting to the private storm sewer system located on the SUBJECT PROPERTY, as generally depicted Preliminary Engineering Plans prepared by Roake and Associates, Inc., dated October 2, 2018, last revised November 29, 2018 (hereinafter referred to as "**Storm Sewer Improvements**").

S11.2 Final engineering plans for the Storm Sewer Improvements shall be submitted for the review and approval of the City Engineer concurrent with or as part of the submission of the final engineering plans for the SUBJECT PROPERTY. The Storm Sewer Improvements shall be completed by the OWNER AND DEVELOPER and accepted by the CITY prior to issuance of any temporary or final occupancy permit for the SUBJECT PROPERTY.

S12.0 WATERMAIN IMPROVEMENTS.

S12.1 OWNER AND DEVELOPER agrees to design and construct a twelve-inch (12") water main to extend south from the existing water main stub at the north property line of the SUBJECT PROPERTY to connect to an existing water main at the northwest corner of the intersection of Naperville-Wheaton Road and Iroquois Avenue in accordance with the Preliminary Engineering Plans prepared by Roake and Associates, Inc., dated October 2, 2018, last revised

November 29, 2018, as said Preliminary Engineering Plans may be modified by the final engineering plans approved by the City Engineer (hereinafter referred to as “**Water Main Improvements**”). Final engineering plans for the Water Main Improvements shall be submitted for the review and approval of the Director of the Public Utilities – Water/ Wastewater (“**Director**”) and the City Engineer concurrent with or as part of the submission of the final engineering plans for the SUBJECT PROPERTY. The Water Main Improvements shall be completed by the OWNER AND DEVELOPER and approved by the Director prior to issuance of any temporary or final occupancy permit for the SUBJECT PROPERTY.

S12.2 Cost Sharing Between the CITY and OWNER AND DEVELOPER

S12.2.1 Subject to the provisions set forth herein, the CITY agrees to reimburse OWNER AND DEVELOPER for 100% of the actual costs of the portions of the Water Main Improvements described in subromanettes (i) and (ii) below (hereinafter “**Off-site Water Main Improvements**”), including the actual costs of design and engineering, installation of water main, mobilization, pressure connection to existing water main, valves, vaults, sidewalk removal and replacement including handicap ramps, pavement patches, trench backfill, and restoration (hereinafter “**Off-site Costs**”).

- i. The portion of the Water Main Improvements from the westerly extension of the south property line of the SUBJECT PROPERTY to the existing water main at the northwest corner of the intersection of Naperville-Wheaton Road and Iroquois Avenue (approximately 214 feet of the 465-foot Water Main Improvements); and
- ii. The portion of the Water Main Improvement that crosses Naperville-Wheaton Road from east to the west (approximately 58 feet of the 465-foot Water Main Improvements).

The City’s reimbursement for said Off-site Costs shall be governed by the process set forth in Section 7-3-6 of the Naperville Municipal Code, and each applicable subpart thereof, and by Section S12.2.4 below.

S12.2.2 As contemplated in Section G.10 herein, the CITY also agrees to reimburse the OWNER AND DEVELOPER the actual cost differential of the construction of a twelve-inch (12”) diameter water main and an eight-inch (8”) diameter water main and appurtenances for the remainder of the Water Main Improvements exclusive of the Off-

site Water Main Improvements (approximately 193 feet of the 465-foot Water Main Improvements) (hereinafter referred to as “**Differential Cost**”).

S12.2.3 Except for the Differential Cost and the Off-site Costs described herein, the OWNER AND DEVELOPER shall be responsible for all other costs associated with the Water Main Improvements.

S12.2.4 Reimbursement of the Differential Cost and the Off-site Costs shall be done in accordance with the provisions of Section 7-3-6 of the Naperville Municipal Code, and each applicable sub-part thereof.

S12.2.4.1 OWNER AND DEVELOPER’S responsibilities shall be as set forth herein and in Section 7-3-6 of the Naperville Municipal Code, and each applicable sub-part thereof.

S12.2.4.2 Notwithstanding the provisions of Section 7-3-6 of the Naperville Municipal Code, the actual costs for design and engineering of the Off-site Water Main Improvements, including surveying costs, shall be billed by the OWNER AND DEVELOPER on the basis of actual consultant hours and rate. All other Off-site Costs shall be billed in accord with Section 7-3-6 of the Naperville Municipal Code, and each applicable sub-part thereof.

S12.2.4.3 The CITY shall review the contract unit prices as submitted by the OWNER AND DEVELOPER for the Water Main Improvements within fourteen (14) days of submittal by the OWNER AND DEVELOPER.

S13.0 SANITARY MAIN IMPROVEMENTS.

S13.1 OWNER AND DEVELOPER shall, at its sole cost, design and extend an eight inch (8”) sanitary main south from the existing sanitary main stub at the north property line of the SUBJECT PROPERTY on the east side of Naperville-Wheaton Road to end at a sanitary manhole located approximately twenty feet (20’) north of the south property line of the SUBJECT PROPERTY, as generally depicted on the Preliminary Engineering Plans prepared by Roake and Associates, Inc., dated October 2, 2018, last revised November 29, 2018 (hereinafter referred to as “**Sanitary Main Improvements**”).

S13.2 Final engineering plans for the Sanitary Main Improvements shall be submitted for the review and approval of the Director and the City Engineer concurrent with or as part of the submission of the final engineering plans for the SUBJECT PROPERTY. The Sanitary

Main Improvements shall be completed by the OWNER AND DEVELOPER and accepted by the CITY prior to issuance of any temporary or final occupancy permit for the SUBJECT PROPERTY.

S13.3 OWNER AND DEVELOPER shall, at its sole cost, dedicate a fifteen foot (15') wide public utility and drainage easement along west property line of the SUBJECT PROPERTY to accommodate the Sanitary Main Improvements, which improvements shall be conveyed to and accepted by the CITY as public improvements upon approval by the Director and City Engineer. Said dedication shall be made part of the final subdivision plat for the SUBJECT PROPERTY.

S14.0 PARK DISTRICT ANNEXATION

S14.1 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.

S15.0 EFFECT OF FAILURE TO RECORD

S15.1 If this agreement or the ordinance approving it are not recorded within one (1) year of the 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.

~ 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

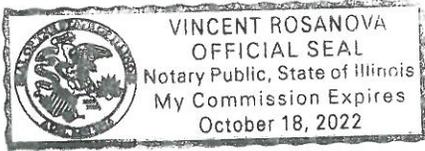
Naperville Wheaton LLC., 127 Aurora Avenue, Naperville, IL 60540

By: Rachel M. Rosanova
[name] Rachel M. ROSANOVA
[title] Member

Attest
By: Matthew Goodman
[name] Matthew Goodman
[title] Witness

State of Illinois)
County of DuPage)

The foregoing instrument was acknowledged before me by Rachel M. Rosanova,
Matthew Goodman, and MATTHEW Goodman, this 29th
day of January, 2019



V. M. R.
Notary Public

-seal-

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

LEGAL DESCRIPTION

PARCEL 1:

LOT 9 IN BLOCK 4 IN ARTHUR T. MC INTOSH AND CO'S DUPAGE FARMS, BEING A SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 21, 1938 AS DOCUMENT 390671, IN DUPAGE COUNTY, ILLINOIS.

PIN: 08-08-106-009

COMMONLY KNOWN AS: 5S275 NAPERVILLE-WHEATON ROAD, NAPERVILLE, ILLINOIS 60563-8504

PARCEL 2:

LOT 10 IN BLOCK 4 IN ARTHUR T. MCINTOSH AND COMPANY'S DUPAGE FARMS, BEING A SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF; RECORDED AS DOCUMENT 390671, IN DUPAGE COUNTY, ILLINOIS.

PIN: 08-08-106-010

COMMONLY KNOWN AS: 5S311 NAPERVILLE-WHEATON ROAD, NAPERVILLE ILLINOIS 60563-8504

PLAT OF ANNEXATION OF

PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.
 58275 AND 58311 NAPERVILLE-WHEATON ROAD
 LOT AREA = 45,499 S.F. OR 1.044 AC.

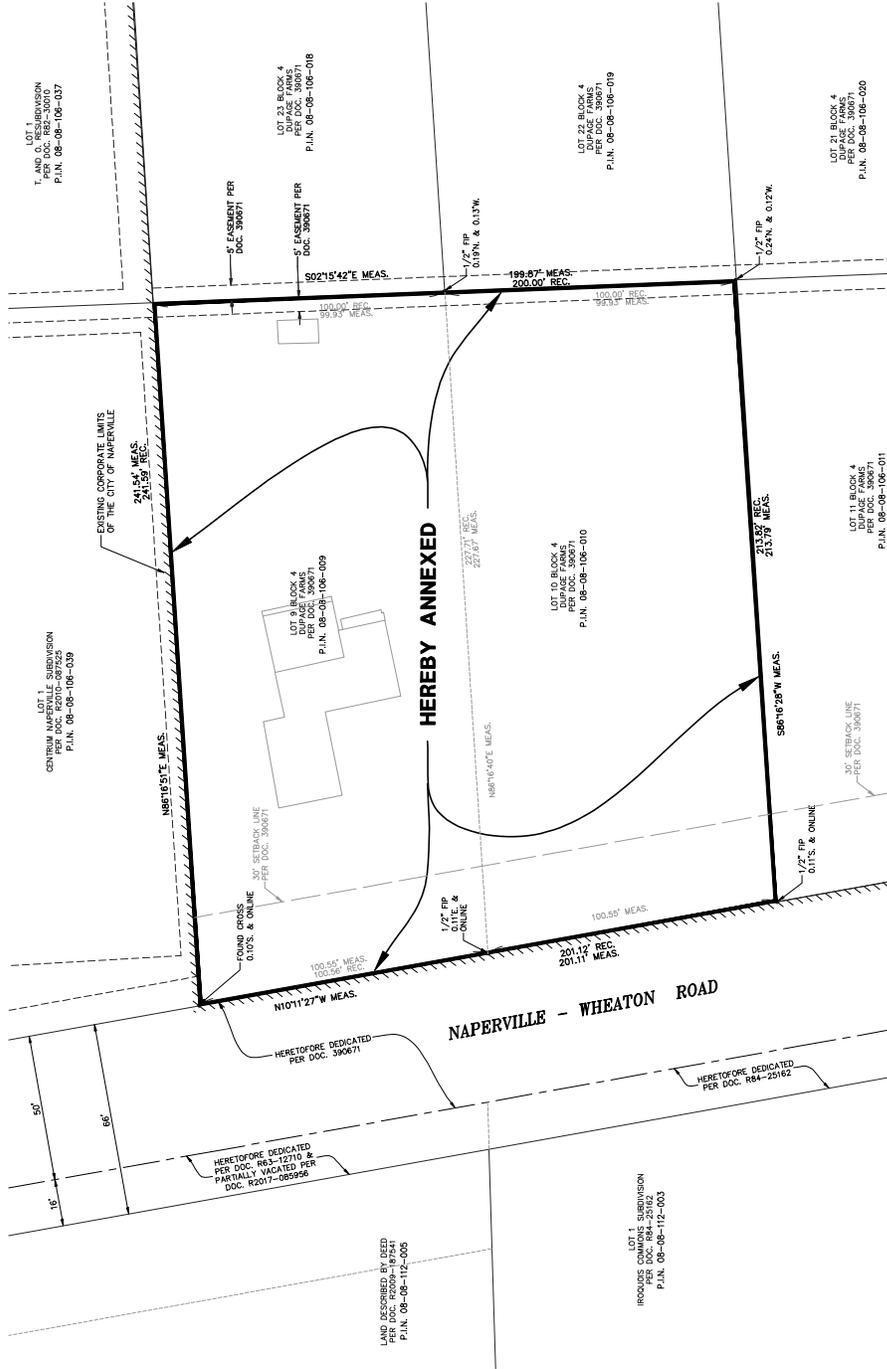
- LEGEND**
- ANNEXATION BOUNDARY
 - SUBDIVISION BOUNDARY
 - EXISTING LOT LINE
 - CENTER LINE
 - EXISTING EASEMENT LINE
 - BUILDING SETBACK LINE
 - EXISTING CORPORATE LIMITS OF THE CITY OF NAPERVILLE

THERE ARE HABITABLE STRUCTURES AND ELECTORS ON THE PROPERTY

SCALE: 1"=20'
 ILLINOIS STATE PLANNING EAST ZONE
 (TRUE NORTH)

THIS PLAT HAS BEEN SUBMITTED FOR RECORDING BY AND RETURN TO:
 NAME: NAPERVILLE CITY CLERK
 ADDRESS: 400 SOUTH EAGLE STREET
 NAPERVILLE, IL 60540

P.L.N. 08-08-108-009
 08-08-108-010



ABBREVIATIONS

REC. RECORD DATA
 S.F. SQUARE FEET
 A.C. ACRES
 C.D.E. CENTER DATA
 R. RADIUS
 A.R.C. DATA
 ROW RIGHT OF WAY
 C.L. CENTERLINE
 P.U.D.E. PUBLIC UTILITIES & DRAINAGE EASEMENT

DUPAGE COUNTY RECORDER'S CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE) SS
 THIS INSTRUMENT WAS FILED FOR RECORD IN THE RECORDERS OFFICE OF DUPAGE COUNTY, ILLINOIS ON THE _____ DAY OF _____ 20____ AT _____ O'CLOCK.

CITY COUNCIL CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE) SS
 APPROVED AND ACCEPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, ILLINOIS, AT A MEETING HELD THE _____ DAY OF _____ A.D. 20____ BY _____ MAYOR _____ CITY CLERK

SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS)
 COUNTY OF DUPAGE) SS
 I, ARTHUR T. MCINTOSH, LICENSED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE PREPARED THIS PLAT FROM FIELD SURVEYS AND EXISTING PUBLIC RECORDS AND THAT THE SAME ACCURATELY REPRESENT THE TRUE AND CORRECT LOCATION OF THE PROPERTY DESCRIBED HEREON.
 LOT 9 AND LOT 10, BLOCK 4, IN NAPERVILLE, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 21, 1938 AS DOCUMENT 390671, IN DUPAGE COUNTY, ILLINOIS.
 THIS PLAT HAS BEEN PREPARED BY ROAKE AND ASSOCIATES, INC., CONSULTING ENGINEERS, LAND SURVEYORS & PLANNERS, 1884 QUINCY AVENUE, SUITE 100A, NAPERVILLE, ILLINOIS 60540, WHOSE LICENSE EXPIRES APRIL 30, 2019 UNDER MY PERSONAL DIRECTION FOR THE EXCLUSIVE USE OF THE CLIENT NOTED HEREON.
 GIVEN UNDER MY HAND AND SEAL THIS _____ DAY OF _____ 20____
 ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR NO. 2819
 LICENSE VALID THROUGH NOVEMBER 30, 2020



CITY PROJECT NO. 18-10000114	
LOT 9 & 10 - ARTHUR T. MCINTOSH AND CO'S DUPAGE FARMS	
PLAT OF ANNEXATION	
DRN/CD. RINAL/CD/MEET	FILE NO. 7727ANEX
DATE: 10/22/18	JOB NO.: 772.007
1 OF 1	SHEET NO. 1

NO.	DATE	DESCRIPTION	REVISED PER CITY R/W	NO.	DATE	DESCRIPTION
1	11/05/18	REVISED PER CITY R/W	(10/29/18)			

PREPARED FOR:
NAAPERVILLE WHEATON, LLC
 NAPERVILLE, ILLINOIS 60540
 TEL. (630) 355-4600
 FAX. (630) 352-3610

ROAKE AND ASSOCIATES, INC.
 CONSULTING ENGINEERS • LAND SURVEYORS • PLANNERS
 1884 QUINCY AVENUE, SUITE 100A • NAPERVILLE, ILLINOIS 60540
 TEL. (630) 366-5632 • FAX (630) 366-3267