

**PINS:
07-24-209-004
07-24-209-005**

**ADDRESS:
10 MARTIN AVENUE
NAPERVILLE, IL 60540**

**PREPARED BY:
CITY OF NAPERVILLE
LEGAL DEPARTMENT
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540
630/420-4170**

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

ORDINANCE NO. 23 -

**AN ORDINANCE RELEASING DECLARATIONS OF
RESTRICTIONS PERTAINING TO PROPERTY LOCATED AT
10 MARTIN AVENUE, NAPERVILLE
(NAPERVILLE MOB)**

1. **WHEREAS**, 10 West Martin, LLC, 533 South Third Street, Suite 100, Minneapolis, MN 55415, is the owner (the "**Owner**") of real property located at 10 Martin Avenue, Naperville, Illinois, legally described on **Exhibit A** and depicted on **Exhibit B** (the "**Subject Property**"); and
2. **WHEREAS**, Ryan Companies US, Inc., 533 South Third Street, Suite 100, Minneapolis, MN 55415 is the contract purchaser of the Subject Property (the "**Contract Purchaser**"); and

3. **WHEREAS**, a certain document entitled “Declarations of Restrictions” (hereinafter “**Declaration**”) was executed on August 7, 1961 and recorded against the Subject Property with the DuPage County Recorder on January 10, 1961 under Document No. R62-930. Said Declaration is attached hereto as **Exhibit C**; and

4. **WHEREAS**, pursuant to Section 2 of the Declaration, the following restrictions were imposed upon the Subject Property at the request of the City of Naperville (“**City**”):

That South Washington Corporation hereby restricts the property described as Lots 1 and 2 in that they will not place a building on said property which covers more than 20 per cent of the total area contained in said Lots 1 and 2;

further Lots 1 and 2 are restricted in that business and professional offices shall be the sole land use for which said property may be used.

For purposes of this restriction, an ethical pharmacy is to be construed as a business office and is defined as one which deals in drugs, medicines, medical supplies and equipment, Vitamins, special dietary and hypoallergenic items and related products and in general serves the medical needs of its customers and which does not deal in appliances, apparel, jewelry, liquor or other items sometimes found in departments of a variety drug store outside its pharmacy and drug departments.

;and

5. **WHEREAS**, Section 3 of the Declaration provides that it represents a restriction that is a covenant running with the land binding upon the owner’s heirs, successors and assigns, provided, however, that: “this restriction, or any part thereof, can be released by a valid resolution of the City Council of the City of Naperville”.

6. **WHEREAS**, since the Subject Property was rezoned to the B1 Zoning District in 1961, the zoning of the Subject Property has changed twice; first to OCI (Office/Commercial/Institutional District) and then, on April 18, 2023, it was rezoned from OCI to HS (Health Services District) under Title 6 of the City’s Zoning Code.

7. **WHEREAS**, the purpose of the Health Services Zoning District as set forth in Section 6-7J-1 of the City Code is to:

...provide accommodation for the City of Naperville's hospital and medical service campuses and to ensure that they will operate in harmony with the surrounding residential, commercial, and institutional uses. The health services district is intended to provide regulations on a campus wide basis by recognizing the interdependency of the various permitted, conditional, and accessory uses and the resources that are shared between them. The health services district regulations are intended to provide a framework to ensure the harmonious coexistence of the primary and ancillary uses contained therein with respect to the avoidance of the realization of undue adverse aesthetic, environmental, and economic impacts on any property located either inside or outside the district.

8. **WHEREAS**, rezoning of the Subject Property to the Health Services Zoning District was supported by its proposed use for a medical facility and cardiovascular center which uses are compatible with and align with the purpose and framework of the Health Services Zoning District; and
9. **WHEREAS**, the Owner and Contract Purchaser have requested that the City release the Subject Property from the restrictions set forth in the Declaration; and
10. **WHEREAS**, by the terms of the Declaration, City has the sole authority to release the restrictions set forth in the Declaration; and
11. **WHEREAS**, the City has determined for the reasons set forth above that the restrictions set forth in the Declaration are no longer necessary or appropriate to be imposed upon the Subject Property and should be released; and
12. **WHEREAS**, on April 18, 2023 the City Council approved Ordinance 23-056 rezoning the Subject Property from OCI (Office/Commercial/Institutional District) to HS (Health Services District), and approved Ordinance 23-057 granting certain

variances (together referenced as the “Naperville Medical Office Building Ordinances”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in full in this Section 1. All Exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: The City hereby releases the Subject Property from the restrictions set forth in the Declarations of Restrictions attached hereto as **Exhibit C.**

SECTION 3: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

SECTION 4: The City Clerk is authorized and directed to record this Ordinance and thereafter to record the Naperville Medical Office Building Ordinances with the DuPage County Recorder.

SECTION 5: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2023.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2023.

Scott Wehri
Mayor

ATTEST:

Pam Gallahue, Ph.D.