

AMENDED OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE
AGREEMENT FOR 433 – 435 W. SPRING STREET

On May 30, 2017 the City of Naperville (“**CITY**”) and Kramer Restoration of DuPage County, LLC entered into an Owner’s Acknowledgement and Acceptance Agreement for 433-435 W. Spring Street (“**Original OAA**”). At this time the same parties have agreed to enter into an Amended Owner’s Acknowledgement and Acceptance Agreement (“**Amended OAA**”) in consideration of the extended temporary use granted herein, as follows:

1. Kramer Restoration of DuPage County, LLC, (hereinafter referred to as the “OWNER AND DEVELOPER”), with an address of 502 W. Fifth Avenue, Naperville, IL 60563, is the owner of the property located at 433 – 435 W. Spring Avenue (hereinafter referred to as the “SUBJECT PROPERTY”).
2. The OWNER and DEVELOPER ~~proposes to~~ may continue to utilize the SUBJECT PROPERTY for Paul Davis Restoration Services, which is an insurance contractor who specializes in remediation and reparation of water/fire damages in residential or commercial structures. Said continued use required approval of an extension of the temporary use granted in accordance with Section 6-2-11 (Temporary Buildings, Structures, and Uses of Land) of the Naperville Municipal Code and City of Naperville Ordinance 17-059 as extended by Ordinance 21-_____ (hereinafter referred to as the “EXTENDED TEMPORARY USE”) based on the current R2 zoning of the SUBJECT PROPERTY and Ordinance 08-005. The OWNER AND DEVELOPER shall be obligated to use and maintain the EXTENDED TEMPORARY USE in accordance with the provisions of the Naperville Municipal Code, the conditions contained herein, the attached Statement of General Conditions, and the Ordinance approving the EXTENDED TEMPORARY USE.
3. TERM/TERMINATION: The SUBJECT PROPERTY is immediately adjacent to 515 Spring Avenue. The property located at 515 Spring Avenue is leased by Ozinga Ready Mix Concrete, Inc. (“**Ozinga**”) which operates a concrete plant on said property as a non-conforming use (“**Non-Conforming Use**”). In the event that the OWNER AND DEVELOPER purchases the adjacent property at 515 Spring Avenue, the OWNER AND DEVELOPER agrees that it shall utilize the property located at 515 Spring Avenue in conformance and compliance with its R2 zoning classification and shall forever waive its right to continue the Non-Conforming Use applicable to said property.

The Term of the EXTENDED TEMPORARY USE for the SUBJECT PROPERTY shall expire, and the OWNER AND DEVELOPER shall immediately cease use of the SUBJECT PROPERTY for the EXTENDED

TEMPORARY USE described herein, (i) on April 18, 2025, or (ii) within six (6) months after the expiration or

termination of Ozinga's lease of the property located at 515 Spring Avenue, or (iii) within six (6) months of a finding that the Non-Conforming Use of 515 Spring Avenue is not renewed due to failure of continuous operation as a concrete plant for a period of six (6) months as provided in Section 6-10 (Nonconforming Uses) of the Naperville Municipal Code, or (iv) immediately after the purchase of the property at 515 Spring Avenue by the OWNER AND DEVELOPER, whichever occurs first. Upon expiration of the EXTENDED TEMPORARY USE the SUBJECT PROPERTY shall be utilized in compliance with its R2 zoning classification.

If during the Term of the EXTENDED TEMPORARY USE, the OWNER AND DEVELOPER ceases to operate from the SUBJECT PROPERTY for the EXTENDED TEMPORARY USE described herein for a continuous period of six (6) months or more, the EXTENDED TEMPORARY USE shall automatically become null and void, and any subsequent use of the SUBJECT PROPERTY shall conform to the R2 zoning regulations.

Notwithstanding the foregoing, the EXTENDED TEMPORARY USE shall be subject to termination in advance of the Term described above as provided in Section 7 below. In the event of termination of the EXTENDED TEMPORARY USE, the SUBJECT PROPERTY shall be utilized in compliance with its R2 zoning classification.

4. USE: During the Term of the EXTENDED TEMPORARY USE, the OWNER AND DEVELOPER shall be the sole occupant on the SUBJECT PROPERTY which shall be used solely for the purpose described herein. The EXTENDED TEMPORARY USE granted is specific to the OWNER AND DEVELOPER only and said EXTENDED TEMPORARY USE shall not be transferred, leased, rented, or otherwise permitted to be used by any other person or entity.
5. LIMITATIONS REGARDING USE OF THE SUBJECT PROPERTY: The following limitations shall be applicable to the EXTENDED TEMPORARY USE approved for the SUBJECT PROPERTY:
 - a. Parking Restrictions:
 - i. Large commercial vehicles used in conjunction with the EXTENDED TEMPORARY USE such as those depicted on EXHIBIT 1 or similar sized vehicles as determined by the Zoning Administrator shall be parked in the rear of the SUBJECT PROPERTY between the buildings and the railroad.
 - ii. Smaller commercial vehicles used in conjunction with the EXTENDED TEMPORARY USE other than those described and

- depicted in Section 5.a.i above shall be permitted to park in any legal parking spaces on the SUBJECT PROPERTY.
- iii. Non-commercial vehicles utilized by employees and customers of the EXTENDED TEMPORARY USE shall be permitted within any legal parking space.
 - iv. Semi-trucks shall be prohibited from the EXTENDED TEMPORARY USE at the SUBJECT PROPERTY.
- b. All loading and unloading activities occurring outside of the buildings on the SUBJECT PROPERTY with the exception of waste management pick-up services shall be limited to the hours between 7 a.m. and 7 p.m. Monday through Saturday and shall occur entirely within the rear of the SUBJECT PROPERTY between the buildings and the railroad. Waste management pick-up services shall be limited to the hours between 6 a.m. and 10 p.m. Monday through Saturday.
 - c. Any noise generated from the SUBJECT PROPERTY shall not exceed the performance standard for commercial use as set forth in Section 6-14-4.1 of the Naperville Municipal Code (“Standard”). If the CITY determines that the SUBJECT PROPERTY is in violation of the Standard, the OWNER AND DEVELOPER shall take necessary measures (e.g., limiting all loading/unloading activities to inside the buildings) to bring the SUBJECT PROPERTY into compliance with the Standard. If the OWNER AND DEVELOPER fails to promptly remedy the violation to the satisfaction of the Zoning Administrator, the Zoning Administrator may recommend termination of the EXTENDED TEMPORARY USE to the City Council as provided in Section 7 below.
 - d. Any dumpster shall be located in the rear of the SUBJECT PROPERTY between the buildings and the railroad, not visible from Spring Avenue. The dumpster area shall be kept clean and free of litter and debris. All garbage shall be contained within a dumpster at all times and the dumpsters shall be covered with a lid at all times except when loading into a dumpster is occurring.
 - e. No outdoor storage of materials collected or stored in conjunction with the operation of the EXTENDED TEMPORARY USE shall be allowed on the SUBJECT PROPERTY. Parking of operable commercial vehicles shall not constitute outdoor storage provided that they are parked in compliance with Section a above.
 - f. Any exterior lighting shall be limited to lighting necessary for security purposes, and shall not exceed 0.00 foot-candles at the south property line and 2.0 foot-candles along the west, north and east property lines. Exterior lighting shall not shine, glare or spill onto the adjacent residential properties. The OWNER AND DEVELOPER shall provide the Zoning Administrator a photometric plan for review and approval prior to installation of any exterior lighting. There shall be no flashing lights on the SUBJECT PROPERTY, except those lights that are required in accordance with applicable life safety regulations.

6. SUBJECT PROPERTY IMPROVEMENTS: The improvements listed in Paragraph 6 of the Original OAA (set forth below) were completed as summarized in Attachment 1 attached hereto and made part hereof. OWNER and DEVELOPER shall be obligated to maintain said improvements in the manner detailed below and in Attachment 1 throughout the life of the EXTENDED TEMPORARY USE. The OWNER AND DEVELOPER will make the improvements to the SUBJECT PROPERTY listed below in order to improve the appearance of the SUBJECT PROPERTY. Said improvements shall be completed and approved by the City prior to issuance of a temporary or final occupancy permit for the SUBJECT PROPERTY. All future improvements of the SUBJECT PROPERTY shall be subject to review and approval by the Zoning Administrator and shall not be taken into consideration by the City Council relative to any future request to extend the term of the TEMPORARY USE.

- a. Remove and replace landscaping materials on the south side of the buildings located on the SUBJECT PROPERTY in accordance with the Landscape Plan (EXHIBIT D to the ordinance approving the TEMPORARY USE).
- b. Stain the brick façade and paint the rest of the facades on the exterior of the buildings on the SUBJECT PROPERTY in accordance with the Color Rendering (EXHIBIT E to the ordinance approving the TEMPORARY USE).
- c. Install a 6' tall, solid wood or PVC fence with a gate, or comparable non-deciduous landscape screening, subject to the review and approval by the Zoning Administrator, along the south property line of the SUBJECT PROPERTY between the west property line and the west wall of the existing building.
- d. Any proposed signage on the SUBJECT PROPERTY shall not be illuminated and shall be subject to review and approval of a separate sign permit.

7. REQUIREMENT TO ADDRESS LEGITIMATE CONCERNS: In the event that the EXTENDED TEMPORARY USE of the SUBJECT PROPERTY causes one or more legitimate concerns to be raised and the City's Zoning Administrator determines that such concern or concerns have a legitimate basis and communicates the same to the OWNER AND DEVELOPER, the OWNER AND DEVELOPER agrees to take appropriate measures to promptly address such concerns. The Zoning Administrator shall review and report to Council any complaints or issues raised concerning the EXTENDED TEMPORARY USE of the SUBJECT PROPERTY within two years of the approval of the EXTENDED TEMPORARY USE. If said concerns are not addressed to the satisfaction of the Zoning Administrator, the Zoning Administrator may recommend

EXHIBIT E

termination of the EXTENDED TEMPORARY USE to the City Council; said termination will be at the discretion of the City Council.

8. **BINDING EFFECT:** The undersigned acknowledges and agrees that the terms contained and referenced herein shall be binding upon and inure to the benefit of the City of Naperville, the OWNER AND DEVELOPER, and the successors, assigns, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.

9. **RECORDATION:** This Amended OAA Agreement will be recorded in the Office of the DuPage County Recorder.

The undersigned warrants that he is the owner of the SUBJECT PROPERTY, or is the duly authorized representative of the owner in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY. The undersigned has full power and authority to sign this Agreement and voluntarily agrees to the provisions set forth herein.

/SIGNATURES ON FOLLOWING PAGES/

OWNER AND DEVELOPER:
Kramer Restoration of DuPage County, LLC

[name] Richard Kramer
[title] Owner

The foregoing instrument was acknowledged before me by _____,
this

_____ day of _____, 2021.

Notary Public

CITY OF NAPERVILLE

By: _____
Steve Chirico
Mayor

Attest:

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

(corporate seal)