

**PROPERTY ADDRESS:  
1001 S. WASHINGTON STREET  
NAPERVILLE, IL 60540**

**P.I.N.  
08-19-318-001**

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

**OWNERS' ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT  
FOR TARTAN HIGHLANDS SUBDIVISION**

This Owners' Acknowledgement and Acceptance Agreement for Tartan Highlands Subdivision ("**Agreement**") located at 1001 S. Washington Street, Naperville, IL 60540, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**City**" or "**City of Naperville**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and DJR Acquisitions 1001 Washington, LLC, an Illinois limited liability company, SOS 1001 Washington, LLC., an Illinois limited liability company, CCK 1001 Washington, LLC, an Illinois liability company and Naperville Washington, LLC, an Illinois limited liability company (hereinafter collectively referred to as "**OWNERS AND DEVELOPERS**"), with offices at 350 W. Hubbard Street, Suite 640, Chicago, IL 60654. The City and the OWNERS AND DEVELOPERS are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

**RECITALS**

A. This Agreement pertains to certain real property located within the corporate limits of the City of Naperville with a common address of 1001 S. Washington Street, Naperville, IL 60540, having parcel identification number 08-19-318-001 (hereinafter referred as the "**SUBJECT PROPERTY**"). The OWNERS AND DEVELOPERS are the owners of the SUBJECT PROPERTY.

B. OWNERS AND DEVELOPERS have petitioned the City for approval of a Preliminary/Final Plat of Subdivision for the Tartan Highlands Subdivision ("**Subdivision Plat**") in order to subdivide the SUBJECT PROPERTY into four commercial lots. Lots 1-3 will each accommodate a commercial building with Building A on Lot 1, Building B on Lot 2 and Building C on Lot 3. Lot 4 will include parking facilities to serve Buildings A, B and C.

C. By entering into this Agreement, the City is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

**NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:**

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNERS AND DEVELOPERS shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY.
3. **Development of the SUBJECT PROPERTY.** OWNERS AND DEVELOPERS shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with final engineering plans prepared by Roake and Associates, Inc., dated April 22, 2019, last revised \_\_\_\_\_ (“**Final Engineering Plans**”) at its sole cost.
4. **Prohibition of Drive-Through Facilities.**
  - 4.1 **Lots 2, 3 and 4.** OWNERS AND DEVELOPERS agree that drive-through facilities on Lots 2, 3, or 4 of the Tartan Highlands Subdivision are prohibited. Any modification of this prohibition shall require an amendment to this Agreement approved by the City Council.
  - 4.2 **Lot 1.** At all times that a coffee house, bakery, cafe, internet café, bank or financial institution, candy or ice cream store, pharmacy, fast casual eating establishment or other similar uses are located on Lot 1, a drive through facility shall be permitted on said Lot 1. Lot 1 cannot be utilized for a fast food establishment such as, but not limited to McDonalds, Arbys, Wendys, Taco Bell, Burger King, White Castle, or similar uses.
5. **Delivery Restrictions.**
  - 5.1 OWNERS AND DEVELOPERS acknowledge and agree that all deliveries to any business establishment on Lots 2 and 3 shall be restricted to occur between the hours of 6:30 a.m. to 10:00 p.m.
  - 5.2 OWNERS AND DEVELOPERS agree that all deliveries to any business establishment on Lots 1, 2 and 3 shall use the entrances and exits on Washington Street and Gartner Road.

6. **Fees Due.** OWNERS AND DEVELOPERS shall pay all fees (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code as amended from time to time, including but not limited to the following:
  - 6.1 **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, OWNERS AND DEVELOPERS shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
  - 6.2 **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNERS AND DEVELOPERS shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
7. **Financial Surety.** Financial surety in a form and from a source acceptable to the City Attorney shall be provided and maintained in the amount of **\$384,291.60** (110% of the approved engineer's cost estimate) which guarantees the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("Public Improvements"). Financial surety shall be received and approved prior to issuance of a site development permit. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, the OWNERS AND DEVELOPERS shall remain obligated for completion of said Public Improvements and/or (at the City's sole discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the City, the OWNERS AND DEVELOPERS shall provide the City with a maintenance surety for the Public Improvements in a form approved by the City Attorney and in conformity with the Naperville Municipal Code then in effect.

As to any surety, or maintenance surety, provided by the OWNERS AND DEVELOPERS to the City hereunder, the OWNERS AND DEVELOPERS agree that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) OWNERS AND DEVELOPERS shall be liable to pay the City's reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the City to draw on said surety.

8. **Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Subdivision Plat has been recorded and until the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

9. **General Conditions.**

9.1 **Binding Effect.** City and OWNERS AND DEVELOPERS acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the City and the OWNERS AND DEVELOPERS and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNERS AND DEVELOPERS.

9.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

9.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.

9.4 **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party.

9.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

9.6 **Ambiguity.** 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.

9.7 **Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.

9.8 **Term.** This Agreement shall be effective upon the Effective Date set forth in Section 8.13 hereof and shall terminate, without further action by either Party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.

9.9 **Automatic Expiration.** If the final plat of subdivision for the SUBJECT PROPERTY is not recorded within five (5) years of the date of approval of

the ordinance approving the final plat of subdivision and this Agreement by the City Council, the final plat of subdivision and this Agreement shall automatically lapse and become null and void without further action by the City.

- 9.10 **Survival.** The terms and conditions set forth in the following paragraphs of this Agreement shall survive the expiration or termination of this Agreement: 1 through 8 and 9.1, 9.2, 9.5, and 9.6.
- 9.11 **Authority to Execute/OWNERS AND DEVELOPERS.** The undersigned warrant that they are the OWNERS AND DEVELOPERS of the SUBJECT PROPERTY, or are the duly authorized representatives of the OWNERS AND DEVELOPERS of the SUBJECT PROPERTY in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY and that the undersigned have full power and authority to sign this document and voluntarily agree to the provisions set forth herein.
- 9.12 **Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.
- 9.13 **Effective Date.** The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by both Parties hereto.

/SIGNATURES ON FOLLOWING PAGES/





**OWNER AND DEVELOPER:  
Naperville Washington, LLC**

Wilhelm D. Kreuzer  
[Signature]

Wilhelm D. Kreuzer  
[Printed name]

MANAGER  
[Title]

State of Illinois        )  
                                  ) ss  
County of DuPage     )  
                              CWR

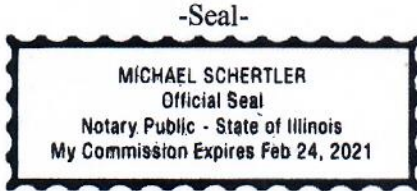
The foregoing instrument was acknowledged before me by Wilhelm Kreuzer  
this 12<sup>th</sup> day of August 2019.

M St  
Notary Public

Michael Schertler  
Print Name

Given under my hand and official seal this 12<sup>th</sup> day of August, 2019.

M St  
Notary Public  
My Commission Expires: 2-24-21





**OWNER AND DEVELOPER:  
SOS 1001 Washington, LLC**

*[Signature]*  
[Signature]

SCOTT STEFANIK  
[Printed name]

MEMBER  
[Title]

State of Illinois     )  
                                  ) ss  
County of DuPage    )  
                          *COOK*

The foregoing instrument was acknowledged before me by Scott Stefanik  
this 12<sup>th</sup> day of August, 2019.

*[Signature]*  
Notary Public

Michael Schertler  
Print Name

Given under my hand and official seal this 12<sup>th</sup> day of August, 2019.

*[Signature]*  
Notary Public  
My Commission Expires: 2-24-21



**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_