

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT**  
**FOR BAUER PLACE PHASE 3**

This Owner's Acknowledgement and Acceptance Agreement (hereinafter referred to as "Agreement") is entered into this \_\_\_\_\_ of \_\_\_\_\_, 2017 (hereinafter "Effective Date") between the City of Naperville, a municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois with offices at 400 South Eagle Street, Naperville, IL 60540 (hereinafter referred to as the "CITY"), and Oak Creek Capital Partners, LLC, duly registered with the Illinois Secretary of State's Office, with an address of P.O. Box 716, St. Charles, Illinois 60174 (hereinafter referred to as the "OWNER AND DEVELOPER"), is the owner of the real property located at the southwest corner of Bauer Road and East Avenue, commonly known as Bauer Place Phase 3 (hereinafter referred to as the "Subject Property").

In accordance with the provisions of the Naperville Municipal Code as amended from time to time, OWNER AND DEVELOPER shall pay all fees and fulfill all other terms and conditions set forth or referenced herein. Said fees shall not be paid under protest or otherwise objected to. OWNER AND DEVELOPER shall also abide by all requirements of the Naperville Municipal Code, as amended from time to time, the Statement of General Conditions attached hereto and made part hereof as **Attachment #1**, and all motions, ordinances and resolutions by the City Council pertaining to or approving the final subdivision plat for the Subject Property.

**1. Cash Contribution in lieu of Actual Land Dedication**

1.1 **School Donation:** \$13,018.47 (based on nine, 3-bedroom single-family attached units), in accordance with Table A (attached). The OWNER AND DEVELOPER acknowledges that this calculation is based on Ordinance 07-188 (Amendment to Naperville Municipal Code Section 7-3-5:3.1: Fair Market Value), as adopted by City Council on August 6, 2007. OWNER AND DEVELOPER acknowledges that the school donation established herein is done so pursuant to City of Naperville ordinance and Code provisions and agree that payment of said amount shall not be paid under protest, or otherwise objected to. OWNER AND DEVELOPER further acknowledges that the school donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds 3-bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the school donation table in effect at the time the building permit is issued. The OWNER AND DEVELOPER shall meet the required school donation by payment of a cash-in-lieu-of-land donation prior to issuance of each building permit, which process has been approved by the City Council of the City of Naperville through an approved variance to Section 7-3-5 of the Municipal Code.

1.2 **Park Donation:** \$56,435.84 (based on nine, 3-bedroom single-family attached units), in accordance with Table B (attached). The OWNER AND

DEVELOPER acknowledges that this calculation is based on Ordinance 07-188 (Amendment to Section 7-3-5:3.1: Fair Market Value), as adopted by City Council on August 6, 2007. OWNER AND DEVELOPER acknowledges that the park donation established herein is done so pursuant to City of Naperville ordinance and Code provisions and agree that payment of said amount shall not be paid under protest, or otherwise objected to. OWNER AND DEVELOPER further acknowledges that the park donation established herein will be verified at the time of each building permit issuance, and if the number of bedrooms in the dwelling unit exceeds 3-bedrooms, then the permit applicant shall be charged for additional bedrooms, in accordance with the park donation table in effect at the time the building permit is issued. The OWNER AND DEVELOPER shall meet the required park donation by payment of a cash-in-lieu-of-land donation prior to issuance of each building permit, which process has been approved by the City Council of the City of Naperville through an approved variance to Section 7-3-5 of the Municipal Code.

- 1.3 Notwithstanding the provisions of 1.1 and 1.2 above, in the event that Section 7-3-5 of the Naperville Municipal Code (“DEDICATION OF PARK LANDS AND SCHOOL SITES OR FOR PAYMENTS OR FEES IN LIEU OF”) is amended (hereinafter “Amended Land/Cash Code provisions”) after the date this Owner’s Acknowledgement and Acceptance is approved by the City Council and prior to recordation of the Final Plat of Subdivision for the Subject Property, the OWNER AND DEVELOPER’S obligations hereunder shall be controlled by the Amended Land/Cash Code provisions.
2. **Engineering Review Fee.** \$1,820.75 (1.5% of the approved engineer’s cost estimate). This fee shall be paid prior to recordation of the Preliminary/Final Plat of Subdivision for the Subject Property.
  3. **Utility Rebate, Special Connection Fees, Recapture Fees, Special Assessment Amounts, Special Service Area Taxes.** None.
  4. **Road Improvement Fees:** \$45,212.31 to be paid prior to the recordation of the Preliminary/Final Plat of Subdivision for Bauer Place Phase 3 for East Avenue Road Improvement Fee. This fee includes a \$10,000.00 credit for the installation of two street lights to be installed by the OWNER AND DEVELOPER as shown on the Final Engineering Plans at its sole cost. Said street lights shall be installed prior to the issuance of a final occupancy permit.
  5. **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 \$133,522.57 (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 (hereinafter referred to as “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 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. Upon acceptance of the Public Improvements by the CITY and prior to release of the surety by the CITY, the OWNER AND DEVELOPER shall provide the CITY with a maintenance bond for the Public Improvements in conformity with the Naperville Municipal Code.

As to any surety, or maintenance surety, provided by the OWNER AND DEVELOPER to the CITY hereunder, the OWNER AND DEVELOPER agrees that: (1) at no time shall the CITY be liable for attorneys' fees with respect thereto; (2) OWNER AND DEVELOPER shall be liable to pay the CITY'S reasonable attorneys' fees and costs (in-house or outside counsel) in enforcing collection 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.

6. **Sidewalks.** The OWNER AND DEVELOPER agrees to install public sidewalk across the frontage of the Subject Property along Bauer Road and East Avenue prior to issuance of a final occupancy permit. An extension of this timeframe may be granted in writing at the discretion of the City Engineer.
7. **Street lights.** The OWNER AND DEVELOPER agrees to install two public street lights as shown on the Final Engineering Plans, prepared by Cemcon, Ltd., dated July 7, 2017 and last revised August 8, 2017, prior to the issuance of a final occupancy permit. Installation of said street lights shall be subject to the following:
  - 7.1 Street Light "L1" – 32' Bronze Davit Arm with 75E Acuity ATBS H MVOLT R2 3K BZ NL XL P7 RFD201313.
  - 7.2 Street Light "L2" – 23' Bronze Davit Arm with 40W Acuity ATBS E MVOLT R2 3K BZ NL XL P7 RFD200289
8. **Rental/Lease Restrictions.** Section S14.0 of the Annexation Agreement for Bauer Place pursuant to Ordinance 16-070 sets forth requirements with respect to Rental and Lease Restrictions for the Bauer Phase 1 Property. Those provisions apply to the Bauer Phase 1 Property and are incorporated herein as set forth below. The same provisions are specifically extended to, and shall apply equally, to the Subject Property.

- 8.1 There shall be one homeowners' association for the Bauer Phase 1 Property, the Bauer Phase 2 Property, and the Bauer Place Phase 3 Property (hereinafter referred to as the "Bauer Place 1, 2, & 3").
  - 8.2 At no time shall more than thirty percent (30%) of the residential units (hereinafter "Units") located on Bauer Place 1, 2, & 3 be rented and/or leased by the owners of said units (hereinafter "Rental/Lease Restriction"). The thirty percent (30%) limit shall be calculated based on the total number of Units located on Bauer Place 1, 2, & 3.
  - 8.3 The OWNER AND DEVELOPER (or the Homeowner's Association for the Bauer Place 1, 2, & 3 if one has been established) shall establish a mechanism to track all rentals and leases of Units on Bauer Place 1, 2, & 3 on an ongoing basis and shall diligently enforce the Rental/Lease Restriction by prohibiting more than 30% of the Units located on Bauer Place 1, 2, & 3 from being rented and/or leased at any time (said percentage to be analyzed based on the total number of Units located on Bauer Place 1, 2, & 3.).
  - 8.4 Within ten (10) days of a written request (hereinafter "Request") from the CITY, the OWNER AND DEVELOPER (or the Homeowner's Association for Bauer Place 1, 2, & 3 if one has been established) shall provide complete and accurate documentation to the CITY which shows: (i) the total number of Units located for each separate phase for Bauer Place 1, 2, & 3; (ii) the number and address of units located on Bauer Place 1, 2, & 3 which were rented and/or leased as of the date on the Request issued by the City; and (iii) an assessment of what percentage of the total number of units of Bauer Place 1, 2, & 3 were rented and/or leased as of the date of the Request.
  - 8.5 The content of the provisions set forth in this Section 8 shall be prominently included in conditions, covenants, and restrictions (hereinafter referenced as "CCRs") established by the OWNER AND DEVELOPER for Bauer Place 1, 2, & 3. The CCRs shall provide that said provisions may not be amended, revised, or eliminated without the express written consent of the City Council of the City of Naperville and that any effort to do so shall be void *ab initio*. The CCRs shall be reviewed and approved by the City Attorney prior to their recordation with the DuPage County Recorder and no building permit shall be issued by the City for the Subject Property until after recordation of the CCRs.
9. **Binding Effect.** This Agreement will be recorded with the office of the Recorder in which the Subject Property is located. The undersigned acknowledges and agrees that the terms contained herein shall be binding upon and inure to the benefit of the City of Naperville, the OWNER or DEVELOPER, and the successors, assigns, and any subsidiary, affiliate or parent of the OWNER or DEVELOPER.

**10. City Remedies.** In the event that any provision set forth in this Agreement is violated and the CITY takes action to enforce the same, the OWNER AND DEVELOPER, and the Homeowner's Association, if one has been established, shall be liable to reimburse the CITY for all reasonable attorney costs, fees, and expenses (including in-house and/or outside legal counsel) associated with the enforcement of such provisions ("Enforcement Costs") within thirty (30) days of issuance of a bill therefor from the CITY, excepting that if the violation is for Section 8 herein, Rental/Lease Restrictions, and the OWNER AND DEVELOPER has turned the Homeowner's Association over to the unit owners, the Homeowner's Association shall be solely responsible for reimbursement. In the event that such reimbursement is not timely made in full, the CITY shall have the right to take any and all actions as it deems necessary and appropriate, including but not limited to filing a lien against the Subject Property for said Enforcement Costs and for all legal and other costs associated with filing and enforcing said lien.

**11. General Provisions.**

- 11.1 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, such provision 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.
- 11.2 Governing 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.
- 11.3 Attachments Incorporated. Each attachment attached hereto or referenced herein is made a part hereof and incorporated herein.
- 11.4 Survival. Any provision related to the payment of fees or other monies to the City and the following provisions shall survive termination or expiration of this Agreement: each section and subsection of Section 1, 2, 4, 5, 6, 7, 8, 9, and 10.
- 11.5 Authorization of OWNER AND DEVELOPER and the CITY. The undersigned warrants that he/she 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 document and voluntarily agrees to the provisions set forth herein. The

CITY also warrants that it has authorized its City Manager and City Clerk to execute this Agreement.

/SIGNATURES ON FOLLOWING PAGES/

**OWNER AND DEVELOPER**  
Oak Creek Capital Partners, LLC

By: [Signature]  
[Printed name] JOHN E. LUCZYNSKI  
[Its/Title] Managing member

The foregoing instrument was acknowledged before me by Peter A. Blaeser this  
20th day of August, 2017.

[Signature]  
Notary Public



**CITY OF NAPERVILLE**

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

Attest

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

DATE: \_\_\_\_\_



## **ATTACHMENT #1**

### **STATEMENT OF GENERAL CONDITIONS**

The following information represents general requirements to be fulfilled by the property OWNER AND DEVELOPER through the development of the Bauer Phase 3 as approved by City Council. This list is not intended to be comprehensive and does not preempt other requirements as set forth in the Naperville Municipal Code as amended from time to time. These requirements are in addition to those listed in Agreement to which this Attachment 1 is attached.

**Public Improvements:** Unless otherwise noted in the Acknowledgement & Acceptance Letter, OWNER AND DEVELOPER will construct all public improvements shown on the Final Engineering Plans at its sole cost.

**Building Permits:** No building permits shall be issued for a particular lot or parcel within the Bauer Phase 3 until the Transportation, Engineering, and Development Business Group; Public Utilities Department; and Fire Department have determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

**Infrastructure Availability Charges and User Fees:** The OWNER AND DEVELOPER, or any other person or entity requesting connection and service to the City's water or sanitary system 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 Bauer Phase 3 for which connection and service is requested.

**Facility Installation Charges and User Fees:** The OWNER AND DEVELOPER, or any other person or entity requesting connection and service to the City of Naperville electric system shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as are applicable to that portion of the Bauer Phase 3 for which connection and service is requested.

# Table A School Donation Worksheet

Name of Subdivision Bauer Place Phase 3

School Donation = Land **0.0409** Cash **\$13,018.47**  
 = Round (((Total Elementary Pop. x 0.0231) + (Total Jr. High Pop. x 0.0208) + (Total High School Pop x 0.0267)),4)  
 = Total Land x \$318,300.00

Type of Unit	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit
<b>Detached</b>						
<b>Single-family</b>						
2-bedroom	0.120	0.000	0.138	0.000	0.000	0.000
3-bedroom	0.268	0.000	0.153	0.000	0.000	0.000
4-bedroom	0.371	0.000	0.259	0.000	0.000	0.000
5-bedroom	0.386	0.000	0.236	0.000	0.000	0.000
<b>Attached</b>						
<b>Single-Family</b>						
1-Bedroom	0.206	0.000	0.057	0.000	0.000	0.000
2-Bedroom	0.214	1.926	0.039	0.351	0.450	1.697
3-Bedroom	0.183	0.000	0.106	0.000	1.966	2.374
4-Bedroom		0.271		0.105	2.102	2.767
<b>Apartments</b>						
Efficiency					1.400	1.400
1-Bedroom	0.058	0.000	0.012	0.000	0.000	0.000
2-Bedroom	0.129	0.000	0.031	0.000	0.000	0.000
3-Bedroom	0.199	0.000	0.073	0.000	0.000	0.000
<b>People Produced</b>	1.926	0.936	0.351	0.450	17.694	21.366
					1.737	

## Table B Park Donation Work Sheet

Name of Subdivision Bauer Place Phase 3

Park Donation = Land 0.1744

Cash \$56,435.84

= Land Donation x \$323,600.00

=Round((Total People Produced x 0.0086),4)

Type of Unit	Pre-School 0 - 4 Yrs	Elementary Grades K-5	Junior High Grades 6-8	High School Grades 9-12	Adults 18-up	Total per Unit
<b>Detached</b>						
<b>Single-family</b>						
2-bedroom	0.127	0.000	0.102	0.000	0.000	0.000
3-bedroom	0.244	0.000	0.179	0.000	0.000	0.000
4-bedroom	0.348	0.000	0.235	0.000	0.000	0.000
5-bedroom	0.333	0.000	0.262	0.000	0.000	0.000
<b>Attached</b>						
<b>Single-Family</b>						
1-Bedroom	0.072	0.000	0.044	0.000	0.000	0.000
2-Bedroom	0.157	1.413	0.060	0.540	1.610	0.000
9 3-Bedroom	0.217	0.000	0.154	0.000	1.746	15.714
4-Bedroom		0.358	0.000	0.198	0.000	0.000
<b>Apartments</b>						
Efficiency					1.210	0.000
1-Bedroom	0.015	0.000	0.013	0.000	0.000	0.000
2-Bedroom	0.037	0.000	0.028	0.000	0.000	0.000
3-Bedroom	0.037	0.000	0.091	0.000	0.000	0.000
<b>People Produced</b>	1.413	1.602	0.540	0.540	1.017	15.714
						20.277