

Created: 3/9/2021
Last revised: 3/26/2021

**PROPERTY ADDRESS:
806 S. JULIAN STREET
NAPERVILLE, IL 60540**

**P.I.N.
08-19-401-001**

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

ANNEXATION AGREEMENT
FOR JULIAN WOODS 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 Simon Frisch and Mona Gandhi, with an address at 440 North Halsted Street, Unit 3A, Chicago, IL 60642 (hereinafter referred to as the “**OWNERS AND DEVELOPERS**”).

RECITALS

1. **WHEREAS**, the **OWNERS AND DEVELOPERS** are the owners 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

2. **WHEREAS**, the **OWNERS AND DEVELOPERS** have signed and filed a Petition for Annexation and Zoning with the Naperville City Clerk for the **SUBJECT PROPERTY**; and

3. **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

4. **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

5. **WHEREAS**, the OWNERS AND DEVELOPERS propose 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 and referenced herein; and

6. **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 R1 District (Low Density Single-Family 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

7. **WHEREAS**, the CITY and the OWNERS AND DEVELOPERS 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 The SUBJECT PROPERTY shall be zoned as set forth in the Recitals and in the Special Conditions below.

G2.2 If this Agreement and the Ordinance approving this Agreement, and those ordinances pertaining to the SUBJECT PROPERTY which were approved by the CITY concurrently with this Agreement, are not recorded with the office of the Recorder in the county in which the SUBJECT PROPERTY is located within the timeframe set forth in said ordinance(s), as may be amended, the OWNERS AND DEVELOPERS 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.

G2.3 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS have filed concurrently herewith a petition executed by OWNERS AND DEVELOPERS 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 Prior to recordation of a Final Plat of Subdivision for any portion of the SUBJECT PROPERTY, the OWNERS AND DEVELOPERS shall, at their sole cost and expense, and at the discretion of the City Engineer:

1. construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way, as approved by the City Engineer; or
2. pay to the CITY the estimated cost to construct sidewalks along the entire frontage of the SUBJECT PROPERTY adjacent to public right-of-way. Upon payment, OWNERS AND DEVELOPERS shall have no further obligation to construct said sidewalk.

G7.0 UTILITY LINES AND EASEMENTS.

G7.1 The OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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, OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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, OWNERS AND DEVELOPERS 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 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 than were in effect as of the date of approval of this Agreement, 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 date of approval 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 OWNERS AND DEVELOPERS, and anything to the contrary contained herein notwithstanding, the OWNERS AND DEVELOPERS 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 for the Annexation of The SUBJECT PROPERTY” set forth below (“Special Conditions”).

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 set forth below.

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 their 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 OWNERS AND DEVELOPERS 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 in the Office of the Recorder of the county in which the SUBJECT PROPERTY is located, and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest, assignees, heirs, executors, or lessees (whether their interest is in the SUBJECT PROPERTY as a whole or in any portion or aspect thereof), 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 or termination of this Agreement unless changed in accordance with applicable law.

G19.3 Any obligation owed by OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS shall survive the expiration or termination of this Agreement.

G20.0 CONTINUING RESPONSIBILITY.

G20.1 If the OWNERS AND DEVELOPERS sell or convey all or any portion of the SUBJECT PROPERTY during the term of this Agreement, all of the OWNERS AND DEVELOPERS' obligations specified in this Agreement shall devolve upon and be assumed by such purchaser, grantee, or successor in interest, and the OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS' 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 expiration or termination 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS' control" if committed, omitted or caused by OWNERS AND DEVELOPERS, OWNERS AND DEVELOPERS' employees, officers or agents or a subsidiary, affiliate or parent of OWNERS AND DEVELOPERS or by any corporation or other business entity that holds a controlling interest in OWNERS AND DEVELOPERS, 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 OWNERS AND DEVELOPERS 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 said annexation. OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS, or its successors and assigns; and (b) the CITY shall enter into a separate written service agreement with the OWNERS AND DEVELOPERS, 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS warrant that they have the authority to enter into this Agreement. The Mayor and City Clerk warrant that they have been lawfully authorized to execute this Agreement.

G32.0 SURETY.

G32.1 All public improvements required to be done by the OWNERS AND DEVELOPERS 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 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.

G33.0 ACCEPTANCE OF PUBLIC IMPROVEMENTS.

G33.1 Subject to approval by the City Engineer, the CITY shall accept public improvements installed by the OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS 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 OWNERS AND DEVELOPERS install 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 OWNERS AND DEVELOPERS and the CITY reasonably determine will benefit properties other than the SUBJECT PROPERTY, the OWNERS AND DEVELOPERS may submit a request to the City Engineer for the City to enter into a recapture agreement ("Recapture Agreement"). The OWNERS AND DEVELOPERS' 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 benefitting properties identified in the Recapture Agreement.

G36.1.1 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.

Due: Prior to recordation of the Ordinance annexing the SUBJECT PROPERTY and prior to recordation of this Agreement.

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 OWNERS AND DEVELOPERS have 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 OWNERS AND DEVELOPERS:

Simon Frisch and Mona Gandhi
440 North Halsted Street, Unit 3A
Chicago, IL 60642

WITH COPIES TO:

Caitlin Paloian, Attorney at Law
Rosanova & Whitaker, Ltd
127 Aurora Avenue
Naperville, Illinois 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 OWNERS AND DEVELOPERS agree to maintain sufficient access for emergency vehicles when construction begins to the satisfaction of the Fire Marshall of the City of Naperville.

S7.0 SCHOOL AND PARK DONATIONS.

S7.1 OWNERS AND DEVELOPERS have requested approval of the Preliminary/Final Plat of Subdivision for Julian Woods prepared by Civil and Environmental Consultants, Inc., dated December 18, 2020, last revised February 2, 2021. As the SUBJECT PROPERTY is currently improved with a single-family house and no additional buildable lot will be created as part of the Preliminary/Final Plat of Subdivision for Julian Woods, no school and park donations will be required for the SUBJECT PROPERTY.

S8.0 PARK DISTRICT ANNEXATION

S8.1 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.

S9.0 ROAD/SIDEWALK IMPROVEMENT FEE

S9.1 The OWNERS AND DEVELOPERS shall pay to the CITY the following Road/Sidewalk Road Improvement Fees, which are the proportionate costs for the roadway and sidewalk improvements to be made adjacent to the SUBJECT PROPERTY on Woodlawn Avenue and Julian Street. Said fees are due prior to the recordation of the Ordinance annexing the SUBJECT PROPERTY and prior to recordation of this Agreement.

- a. Road Improvement Fee on Woodlawn Avenue: \$64,899.25 (199.69 feet of frontage at \$325.00 per lineal foot)
- b. Road Improvement Fee on Julian Street: \$42,690.40 (116.96 feet of frontage at \$365.00 per lineal foot)
- c. Sidewalk Improvement Fee on Julian Street: \$4,327.52 (116.96 feet of frontage at \$37.00 per lineal foot)

S10.0 EXISTING STRUCTURES.

S10.1 All existing structures located on the SUBJECT PROPERTY shall be demolished no later than ninety (90) days after the recordation of this Agreement (“Demolition Timeframe”) unless a different timeframe is agreed to in writing by the City Zoning Administrator. The OWNER AND DEVELOPER shall apply for and obtain a demolition permit from the CITY prior to commencement of any demolition work. OWNER AND DEVELOPER shall provide written notice to the City Zoning Administrator (which may be submitted by email) within seven (7) days of completion of the demolition. If demolition is not accomplished within the Demolition

Timeframe, or any extension thereof approved in writing by the City Zoning Administrator, the OWNER AND DEVELOPER shall cause City inspections of all structures on the SUBJECT PROPERTY to occur, and within sixty (60) days after expiration of the Demolition Timeframe shall have said structures brought into conformity with all then applicable requirements set forth or referenced in the Naperville Municipal Code.

~ 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

Simon Frisch, 440 North Halsted Street, Unit 3A, Chicago, IL 60642

Attest

By: _____
[name]
[title]

By: _____
[name]
[title]

State of Illinois)

)

County of _____)

)

The foregoing instrument was acknowledged before me by _____,
_____, and _____, this _____
day of _____, 20__.

Notary Public

-seal-

OWNER AND DEVELOPER

Mona Gandhi, 440 North Halsted Street, Unit 3A, Chicago, IL 60642

Attest

By: _____
[name]
[title]

By: _____
[name]
[title]

State of Illinois)

)

County of _____)

)

The foregoing instrument was acknowledged before me by _____,
_____, and _____, this _____
day of _____, 20__.

Notary Public

-seal-

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

LEGAL DESCRIPTION

LOT 2 (EXCEPT THE EASTERLY 100 FEET THEREOF) AND (EXCEPT THE SOUTHERLY 90 FEET THEREOF) IN BLOCK 9 IN ARTHUR T. MC INTOSH AND CO'S NAPERVILLE ESTATES, BEING A SUBDIVISION OF PART OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 20, 1927 AS DOCUMENT 236013, IN DUPAGE COUNTY, ILLINOIS AND ALSO THE SOUTH 7 FEET OF WOODLAWN AVENUE LYING EAST OF THE EAST LINE OF JULIAN STREET EXTENDED NORTHERLY AND WEST OF THE WESTERLY LINE OF THE EASTERLY 100 FEET OF SAID LOT 2 EXTENDED NORTHERLY, ACCORDING TO THE PARTIAL PLAT OF VACATION RECORDED ON FEBRUARY 5, 1998 AS DOCUMENT R1998-022339, IN DUPAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 806 S. Julian St., Naperville, IL 60540

PIN: 08-19-401-001

