

OWNER'S ACKNOWLEDGEMENT & ACCEPTANCE AGREEMENT
FOR CLOW CREEK FARM ADDITION

This Owner's Acknowledgement and Acceptance Agreement ("Agreement" or "OAA") 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 (hereinafter referred to as the "City"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Nick Stanitz with offices at 1807 S. Washington Street, Suite 110, Naperville, IL 60565 ("OWNER AND DEVELOPER"). The OWNER AND DEVELOPER is the owner of record and developer of real property located at the southwest corner of 103rd Street and Book Road, commonly known as the Clow Creek Farm Addition Subdivision ("SUBJECT PROPERTY"). The CITY and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

A. This Agreement pertains to certain real property within the corporate limits of the City of Naperville located at the southwest corner of Book Road and 103rd Street, Naperville, Illinois 60563, Will County, commonly known as Clow Creek Farm Addition (hereinafter referred to as the "SUBJECT PROPERTY"). legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof (hereinafter "**Subject Property**").

B. An annexation agreement ("Annexation Agreement") for the SUBJECT PROPERTY was approved by the Naperville City Council on March 6, 2018 by Ordinance No. 18-016 which Annexation Agreement was recorded with the Will County Recorder as Document number R2018-_____. In addition to the Annexation Agreement, the following ordinances were also approved by the Naperville City Council as to the Subject Property on March 6, 2018: Ordinance No. 18-017 approving annexation of a portion of the SUBJECT PROPERTY; Ordinance 18-018 rezoning the SUBJECT PROPERTY to R1A; Ordinance 18-019 revoking a portion of the 1994 Clow Creek Farm Planned Unit Development and Subdivision Plat; Ordinance 18-020 approving the Preliminary Plat of Subdivision the SUBJECT PROPERTY; and Ordinance 18-021 approving a conditional use for a Planned Unit Development, a Preliminary Planned Unit Development Plat and deviations for Clow Creek Farm Addition.

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, by and through the City's home rule authority, and 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. **Compliance.** The OWNER AND DEVELOPER shall pay all fees and fulfill all other special conditions set forth or referenced herein in addition to the

requirements set forth in the Naperville Municipal Code as amended from time to time, the attached Statement of General Conditions attached hereto as **Exhibit C**, and all ordinances and resolutions by the City Council related to the SUBJECT PROPERTY including but not limited to the Annexation Agreement and the ordinance approving the final subdivision plat for the SUBJECT PROPERTY. Said fees shall not be paid under protest or otherwise objected to.

3. **Fire District Disconnection Fee.** Pursuant to Section S3.2 of the Annexation Agreement, the amount to be paid to the Plainfield Fire Protection District pursuant to the provisions of 70 ILCS 705/20(e)(1)-(5) as a result of the annexation of a portion of the SUBJECT PROPERTY to the CITY shall be \$5,284.41. An estimated amount of \$5,203.92 was paid by the OWNER AND DEVELOPER prior to recordation of the Annexation Agreement. The OWNER AND DEVELOPER shall pay the remaining in the amount of \$80.49 balance to the CITY prior to recordation of the final plat of subdivision for the SUBJECT PROPERTY. Notwithstanding the foregoing, if the OWNER AND DEVELOPER fails to pay said balance in full, OWNER AND DEVELOPER shall remain liable for such payment, including interest thereon at a rate of eighteen percent (18%) per annum or the highest applicable legal rate, if any, whichever is less, and the City shall be entitled to withhold occupancy permits for the SUBJECT PROPERTY until such payment is made in full.

4. **School and Park Donation.** Pursuant to Section S9.0 of the Annexation Agreement, the OWNER AND DEVELOPER shall meet all school and park donation requirements for the SUBJECT PROPERTY by appropriate cash-in-lieu contribution as set forth in Section 7-3-5 (Dedication of Park Lands and School Sites or For Payments or Fees In Lieu Of) of the Naperville Municipal Code, as amended from time to time. The OWNER AND DEVELOPER has elected to pay for the required school and park donation fees on a per-permit basis pursuant to the school and park payment provisions set forth in Section 7-3-5:5.2.2 of the Naperville Municipal Code prior to issuance of each building permit for each residential dwelling unit within the Final Plat of Subdivision of the SUBJECT PROPERTY. No credit shall be given for any existing structures on the SUBJECT PROPERTY.

5. **Engineering Review Fees.** The OWNER AND DEVELOPER shall pay the engineering review fee in the amount of \$35,790.41 (1.5% of the approved engineer's cost estimate) prior to recordation of the Final Plat of Subdivision for the SUBJECT PROPERTY.

6. **Surety.** Financial surety in a form acceptable to the City Attorney shall be provided and maintained in the amount of \$2,624,629.70 (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 "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, 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 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.

7. **Annexation Agreement.** The provisions of the Annexation Agreement shall remain in full force and effect, including but not limited to provisions pertaining to: Recapture fee [S3.1]; Emergency Access [S6.1]; Sidewalks [S11.0]; Private Trails [S12.1]; and 103rd Street Improvements [S13.1].

8. **Recordation/Binding Effect.** This Agreement will be recorded with the office of the Will County Recorder. 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 AND DEVELOPER, and the successors, assigns, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.

9. **General Provisions.**

9.1 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.

9.2 Amendment. Except as otherwise provided herein, the agreements, covenants, terms and conditions contained may be modified only through the written mutual consent of the Parties hereto.

9.3 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.

9.4 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.

9.5 Authority to Modify Timeframes. Any provision herein which sets forth a timeframe for completion of any obligation may be revised upon written agreement of the City Engineer and the OWNER AND DEVELOPER.

9.6 Attorney's Fees. OWNER AND DEVELOPER shall be liable for any attorney's fees (whether in-house or outside counsel), costs, and expenses resulting from the CITY'S enforcement of this Agreement if the CITY prevails in an enforcement proceeding before a court of competent jurisdiction.

9.7 Exhibits. Each exhibit attached or referenced herein shall be considered incorporated herein and made part hereof

The Parties hereto voluntarily agree to the provisions set forth herein. The undersigned warrants that it is lawfully authorized to execute this Agreement on behalf of the OWNER AND DEVELOPER and that as of the date of execution of this Agreement the OWNER AND DEVELOPER is the owner in fee simple of the SUBJECT PROPERTY. Prior to execution of this Agreement by the CITY, the OWNER AND DEVELOPER shall provide the CITY with evidence that the OWNER AND DEVELOPER is the owner in fee simple of the SUBJECT PROPERTY and that the undersigned has legal authority to execute this Agreement on behalf of the OWNER AND DEVELOPER.

~ SIGNATURES ON FOLLOWING PAGE ~

IN WITNESS WHEREOF, the parties hereto set their hands and seals.

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 _____, 2018.

Notary Public

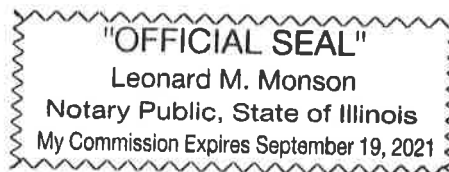
-seal-

OWNER AND DEVELOPER:

Nick Stanitz, 1807 S. Washington Street, Suite 110, Naperville, IL 60565

Nick Stanitz
Nick Stanitz

The foregoing instrument was acknowledged before me by NICK STANITZ, this
25 day of JULY, 2018.



Leonard M. Monson
Notary Public

EXHIBIT C

STATEMENT OF GENERAL CONDITIONS

The following are general requirements to be fulfilled by the OWNER AND DEVELOPER through the development of the SUBJECT PROPERTY as approved by City Council. This list is not intended to be comprehensive and does not preclude all other requirements as set forth in the Naperville Municipal Code as amended from time to time. These requirements may be in addition to those listed in the Owner's Acknowledgement and Acceptance Agreement ("OAA") for the SUBJECT PROPERTY.

Public Improvements: Unless otherwise noted in the Annexation Agreement or the OAA, the OWNER AND DEVELOPER will construct all public improvements shown on the Final Engineering Plans approved by the City Engineer for the SUBJECT PROPERTY at its sole cost.

Building Permits: No building permits shall be issued for any lot or parcel within the SUBJECT PROPERTY 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 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, that are applicable to any portion of the SUBJECT PROPERTY for which connection and service to the City's water or sanitary system is requested.

Facility Installation Charges and User Fees: The OWNER AND DEVELOPER 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, that are applicable to any portion of the SUBJECT PROPERTY for which connection and service to the City of Naperville electric system is requested.