

PROPERTY ADDRESS:
22, 24, 26 W. Jefferson Avenue
Naperville, Illinois 60540

P.I.N.:
07-13-430-012

**WHEN RECORDED
RETURN TO:**
City Clerk
City of Naperville
400 S. Eagle St.
Naperville, Illinois 60540

CITY OF NAPERVILLE
FIRST AMENDED FIRE SUPPRESSION INSTALLATION AGREEMENT

THIS AGREEMENT (hereinafter referred to as this “Agreement”), made and entered into on November 20, 2018, pursuant to the authority of the Illinois Constitution, State Statutes, and the Naperville Municipal Code, between the City of Naperville, an Illinois municipal corporation and home rule unit of local government, with its principal offices located at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter referred to as the “City”) and Bruce G. Herkert, 672 Lookout Court, Naperville, IL 60540 (hereinafter referred to as the “Owner”). The City and the Owner may hereinafter be referenced individually as “Party” or cumulatively as “Parties.”

RECITALS

WHEREAS, the City is an Illinois home rule municipal corporation situated in Will and DuPage Counties under and by virtue of the Illinois Constitution, State Statutes, and the Naperville Municipal Code, and has acted in the exercise of its statutory and home rule authority entering into this Agreement;

WHEREAS, the Owner owns certain real property located at 22, 24, and 26 W. Jefferson Avenue, Naperville, Illinois 60540, P.I.N.: 07-13-430-012 as described per the Legal Description attached hereto as **Exhibit A** (hereinafter referred to as the “Subject Property”); and

WHEREAS, in 2009, the Owner of the Subject Property applied to the City for a building permit which affected all or a portion of the structure located on the Subject Property (hereinafter referred to as the “New Construction”); and

WHEREAS, said New Construction was required to be built in compliance with the fire suppression requirements contained in the Naperville Municipal Code (hereinafter “City Code”); and

WHEREAS, the remainder of the structure(s) on the Subject Property, other than the New Construction, (hereinafter “Remaining Structure”) was not in compliance with the fire suppression requirements contained in the City Code; and

WHEREAS, Section 5-1A-3: Section 3403.1 of the City Code provides that prior to the issuance of a building permit for the New Construction, the Owner may enter into a legal agreement with the City that details a plan for the installation of a fire suppression system for the Remaining Structure that brings the Remaining Structure into compliance with the fire suppression requirements contained in City Code within a period of up to ten (10) years from the date of the issuance of the building permit for the Renovations; and

WHEREAS, such Fire Suppression System Installation Agreement (hereinafter “Existing Agreement”) was recorded against the Subject Property on April 14, 2009 as R2009-054299; and

WHEREAS, per the Existing Agreement, on or before January 1, 2019, the Owner shall cause all portions of the Remaining Structure to be brought into compliance with the fire suppression requirements of the City Code (hereinafter “Fire Suppression Compliance Date”); and

WHEREAS, in September 2018, Bruce and Virginia Herkert (hereinafter “Petitioners”) submitted a request to extend the Fire Suppression Compliance Date, which was supported by the City of Naperville Building Review Board and City Council; and

WHEREAS, the Owner is therefore entering into a First Amended Fire Suppression System Installation Agreement (hereinafter “First Amended Agreement”) which creates a new Fire Suppression Compliance Date; and

WHEREAS, this First Amended Agreement shall inure to and be binding upon the Owner and upon the Owner’s heirs, assigns, transferees, executors, agents, representatives, and those of subsequent owners of Subject Property (hereinafter cumulatively referred to as the “Owner”).

IS IT, THEREFORE, AGREED by and between the City and the Owner, in compliance with the City Code, and in consideration of the mutual covenants contained herein, as follows:

1. **Recitals Incorporated by Reference**: The Recitals set forth above are substantive and are specifically incorporated into and made part of this Agreement as though fully set forth in this Section 1.
2. **Fire Suppression Compliance Deadline**: On or before January 1, 2021 (hereinafter referred to as the “First Amended Fire Suppression Compliance Deadline”) the Owner shall cause all portions of Remaining Structure and Subject Property to be brought into compliance with the fire suppression requirements of the City Code.
3. **Fire Suppression Plan**: On or before January 1, 2020, the Owner shall submit a written plan to bring all portions of Remaining Structure and Subject Property into compliance with the fire suppression requirements of the City Code (hereinafter referred to as the “Fire Suppression Plan”) to the City’s Fire Department and Transportation, Engineering and Development Department for approval. The Owner is required to obtain the City’s written approval of the Fire Suppression Plan prior to implementation. The City may make any changes and modifications to the Fire Suppression Plan as determined to be necessary by the City, in its sole discretion, to ensure compliance with the City Code (hereinafter referred to as the “Approved Fire Suppression Plan”). The Owners, at its

sole cost, shall implement the Approved Fire Suppression Plan on or before the First Amended Fire Suppression Compliance Deadline.

4. **Occupancy**: If the Approved Fire Suppression Plan has not been completed and implemented, as determined by the City in its sole discretion, by the First Amended Fire Suppression Compliance Deadline, the Owner agrees that the Subject Property shall not be occupied or utilized after the First Amended Fire Suppression Compliance Deadline. If the Approved Fire Suppression Plan has not been completed and implemented, as determined by the City in its sole discretion, by the First Amended Fire Suppression Compliance Deadline, the City may revoke any occupancy permits issued by the City for the Subject Property. This remedy is in addition to the remedies provided in Section 5 below.
5. **Costs**: If the Owner fails to abide by any of the obligations and responsibilities set forth in this Agreement, the City may take any action it deems appropriate to enforce any of the obligations and responsibilities in this Agreement and the Owner shall be liable for the costs of any such actions including the payment of all reasonable attorneys' fees and costs associated with any enforcement actions. Any such costs that are not promptly paid by the Owner may be filed as a lien against the Subject Property.
6. **Recorded Land Covenant**: This First Amended Agreement shall constitute a covenant running with the land of the Subject Property. A copy of this First Amended Agreement shall be recorded on the Subject Property with the Office of the Recorder in which the Subject Property is located and shall supersede the prior Fire Suppression System Installation Agreement recorded against the Subject Property as R2009-054299.
7. **Changes in Law**: Unless otherwise provided in this First Amended Agreement, any reference to laws, statutes, ordinances, rules or other regulations shall be deemed to include any modifications of, or amendments to, such laws, statutes, ordinances, rule or regulations that may occur in the future.
8. **Governing Law and Venue**: This First Amended Agreement shall be governed by, and enforced in accordance with, the laws of the State of Illinois. The Parties agree that any

authorized to do so and to bind said Party to the obligations and responsibilities of this First Amended Agreement by the corporate authorities of such Party.

IN WITNESS WHEREOF, the Parties to this First Amended Agreement have caused this First Amended Agreement to be signed by their duly authorized representatives on the day and date first written above and by their signatures acknowledge that they have read and understand this First Amended Agreement, have had an opportunity to review and discuss this First Amended Agreement with legal counsel, and intend to be bound by its terms.

disputes that arise as a result of this First Amended Agreement will be heard in a court of competent jurisdiction located in the Eighteenth Judicial Circuit, DuPage County, Illinois.

9. **Severability**: It is hereby expressed to be the intent of the Parties to this First Amended Agreement that should any provision, covenant, agreement, or portion of this First Amended Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this First Amended Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provision shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this First Amended Agreement to the greatest extent permitted by applicable law.
10. **Drafting Party**: This First Amended Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this First Amended Agreement. Moreover, each and every provision of this First Amended Agreement shall be construed as though all Parties to this First Amended Agreement participated equally in the drafting of this First Amended Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this First Amended Agreement.
11. **Amendments and Modifications**: No amendment or modification to this First Amended Agreement shall be effective until it is reduced to writing and approved by written execution of all Parties in accordance with applicable law.
12. **Entire Agreement**: This First Amended Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this First Amended Agreement.
13. **Authority to Execute**: Each Party hereby warrants and represents to the other Party that the persons executing this First Amended Agreement on its behalf have been properly

CITY OF NAPERVILLE

By: *Doug A. Krieger*
Douglas A. Krieger
Naperville City Manager

ATTEST:

By: *Pam Gallahue*
Pam Gallahue, Ph.D
Naperville City Clerk

OWNER:

By: *Bruce G. Herkert*

Printed Name: BRUCE G. HERKERT

Its: _____

State of Illinois)
) SS
County of DuPage)

The foregoing instrument was acknowledged before me on behalf of
Bruce G Herkert this 24 day of Nov, 2018 by
himself, its owner.

Renee L Meszaros
Notary Public
Renee L Meszaros
Print Name

