

PROPERTY ADDRESSES:

24 Aurora Avenue
30 Aurora Avenue
514 S Main Street
Naperville, Illinois 60540

P.I.N.s

07-24-204-001
07-24-204-024

RETURN TO:

**City of Naperville
City Clerk's Office
400 South Eagle Street
Naperville, IL 60540**

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR CHARLESTON ROW II**

This Owner's Acknowledgement and Acceptance Agreement ("**Agreement**") for Charleston Row II located at 24 and 30 Aurora Avenue, and 514 S Main Street, Naperville, Illinois 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**"), with an address of 400 S Eagle Street, Naperville, Illinois 60540, and Charleston Row II, LLC, ("**OWNER AND DEVELOPER**"), with an address of 933 E Ogden Avenue, Naperville, Illinois 60563. The City and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

RECITALS

A. This Agreement pertains to certain real property within the corporate limits of the City of Naperville with common addresses of 24 and 30 Aurora Avenue and 514 S Main Street, Naperville, Illinois having parcel identification numbers of 07-24-204-001 and 07-24-204-024 ("**SUBJECT PROPERTY**"), which SUBJECT PROPERTY is currently improved with three (3) residential buildings and associated structures.

B. OWNER AND DEVELOPER intends to develop the SUBJECT PROPERTY with a six (6) unit single-family attached building and a two (2) unit duplex building, for a total of eight (8) residential dwellings.

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 OWNER AND DEVELOPER 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. Sidewalk Construction.** OWNER AND DEVELOPER shall install sidewalk adjacent to the SUBJECT PROPERTY in strict compliance with the provisions of the Naperville Municipal Code, as amended from time to time, including but not limited to Section 5-2B-5 thereof. Notwithstanding the foregoing, the provisions of the Code, including but not limited to the timeframe for installation of sidewalks, may be varied by the written approval, or the written direction, of the City Engineer.
- 4. Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Final 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. Notwithstanding the foregoing, site work may be undertaken with the issuance of an appropriate At Risk Agreement as provided in the Naperville Municipal Code as approved by the City Engineer in a form approved by the City Attorney.
- 5. Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, 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, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- 6. Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND DEVELOPER shall pay for all Facility Installation 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.
- 7. Special Conditions.**
 - 7.1 School and Park Donations.**
 - 7.1.1 School Donation.** \$0.00 (based on eight two-bedroom single-family attached units, and credits for two three-bedroom single-family detached units and a duplex containing one two-bedroom single-family attached unit and one three-bedroom single-family attached unit), in accordance with the table attached hereto and incorporated herein as **EXHIBIT A**, pursuant to Section 7-3-5

of the Naperville Municipal Code (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of). No refund of the school donation fee is due to the OWNER AND DEVELOPER.

7.1.2 Park Donation. \$14,367.84 (as adjusted if necessary): OWNER AND DEVELOPER has elected to pay a cash in lieu of land park donation as permitted by Section 7-3-5 of the Naperville Municipal Code (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu thereof). OWNER AND DEVELOPER has further elected to make such park donation of \$14,367.84 ("Park Donation") prior to recordation of the Final Plat of Subdivision for the Subject Property per the "Estimated Lump Sum Payment" provisions Section 7-3-5:5.2.1 of the Naperville Municipal Code. Said Park Donation is based on eight two-bedroom single-family attached units, and credits for two three-bedroom single-family detached units and a duplex containing one two-bedroom single-family attached unit and one three-bedroom single-family attached unit in accordance with the table attached hereto and made part hereof as **EXHIBIT B**. Further, OWNER AND DEVELOPER acknowledges that said amount will be verified at the time of each building permit issuance; if the number of bedrooms in the dwelling unit for which a permit is sought exceeds two (2) 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. A note shall be included on the Final Plat of Subdivision for the Subject Property which indicates the payment election made above in a form approved by the Zoning Administrator. OWNER AND DEVELOPER acknowledges that said Park Donation is established herein pursuant to Code provisions, and agrees that payment shall not be paid under protest, or otherwise objected to.

7.2 Fees Due Prior to Recordation of Final Subdivision Plat. OWNER AND DEVELOPER 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:

7.2.1 Engineering Review Fee. \$3,070.97 (1.5% of the approved engineer's cost estimate). This fee is due prior to recording the Final Plat of Subdivision.

7.2.2 Recapture. \$3,069.84 for the 24 Aurora Avenue water service upgraded to 1.5" as part of watermain improvements made in 2008. This fee is due prior to recording the Final Plat of Subdivision.

7.3 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 \$225,204.10 (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 for the SUBJECT PROPERTY. 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. Prior to acceptance of the Public Improvements by the City, the OWNER AND DEVELOPER shall provide the City with a maintenance surety for the Public Improvements in a form, and from a source, approved by the City Attorney and 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.

7.4 Demolition of Existing Structures. OWNER AND DEVELOPER shall demolish the existing structures on the SUBJECT PROPERTY prior to recordation of the Final Plat of Subdivision.

7.5 Development of the Subject Property. OWNER AND DEVELOPER 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 November 16, 2018, last revised January 15, 2019 ("Final Engineering Plans") at its sole cost unless otherwise provided herein.

8. General Conditions.

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

- 8.2 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.
- 8.3 Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the Parties hereto.
- 8.4 Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party which consent shall not be unreasonably withheld.
- 8.5 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.
- 8.6 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.
- 8.7 Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 8.8 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, this Agreement shall automatically expire without any further action by either Party hereto.
- 8.9 Recordation.** This Agreement will be recorded by the City Clerk with the Office of the Recorder for DuPage County.
- 8.10 Authority to Execute/OWNER AND DEVELOPER.** The undersigned warrants that he/she is the OWNER AND DEVELOPER of the SUBJECT PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER 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 has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.
- 8.11 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.

8.12 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:



Signature

Charleston Row II, LLC



[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Erik Van Someren
this 11th day of February 2019.



Notary Public

Jennifer Jones

Print Name

Given under my hand and official seal this 11th day of February, 2019.





Notary Public

My Commission Expires: 2/1/2021

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

By: _____
Pam Gallahue, Ph.D.
City Clerk

Date: _____

School Donation Worksheet

Name of Subdivision Charleston Row II

School Donation = Land -0.0131 Cash (\$4,169.73) = Total Land x \$318,300.00
=Round (((Total Elementary Pop. x 0.0231) + (Total Jr. High Pop. x 0.0208) + (Total High School Pop x 0.0267)),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
Detached						
Single-family						
2-bedroom	0.120	0.000	0.138	0.000	0.000	0.000
-2 3-bedroom	0.268	-0.536	0.153	-0.306	-0.270	-3.826
4-bedroom	0.371	0.000	0.259	0.000	0.000	2.955
5-bedroom	0.386	0.000	0.236	0.000	0.000	0.000
Attached						
Single-Family						
1-Bedroom						0.000
7 2-Bedroom	0.206	1.442	0.057	0.399	0.210	9.226
-1 3-Bedroom	0.214	-0.214	0.039	-0.039	-0.050	1.697
4-Bedroom	0.183	0.000	0.106	0.000	0.000	11.879
Apartments						
Efficiency					1.400	0.000
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	1.710
3-Bedroom	0.199	0.000	0.073	0.000	0.000	0.000
People Produced						
	0.692	-0.488	0.054	-0.110	3.434	0.000
						3.595
						-0.544

Park Donation Work Sheet

Name of Subdivision	Charleston Row II		
Park Donation =	Land	Cash	
	0.0444	\$14,367.84	
	=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
Detached						
Single-family						
2-bedroom	0.127	0.000	0.327	0.000	0.118	0.000
-2 3-bedroom	0.244	-0.488	0.440	-0.358	0.177	0.000
4-bedroom	0.348	0.000	0.522	0.000	0.265	0.000
5-bedroom	0.333	0.000	0.533	0.000	0.279	0.000
Attached						
Single-Family						
1-Bedroom						0.000
7 2-Bedroom	0.072	0.504	0.091	0.637	0.044	0.308
-1 3-Bedroom	0.157	-0.157	0.178	-0.178	0.060	-0.060
4-Bedroom	0.217	0.000	0.358	0.000	0.154	0.000
Apartments						
Efficiency						
1-Bedroom	0.015	0.000	0.033	0.000	0.013	0.000
2-Bedroom	0.037	0.000	0.063	0.000	0.028	0.000
3-Bedroom	0.037	0.000	0.152	0.000	0.091	0.000
People Produced	-0.141	-0.421	-0.110	0.093	5.740	5.166