

**PREPARED BY AND
WHEN RECORDED
RETURN TO:**

Legal Department/City Attorney
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

(Above Space for Recorder's use only)

**WATER STREET REDEVELOPMENT AGREEMENT
BETWEEN
CITY OF NAPERVILLE, ILLINOIS
AN ILLINOIS MUNICIPAL HOME RULE CORPORATION
AND
WATER STREET PROPERTY OWNER, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

Dated: _____, 2015

WATER STREET REDEVELOPMENT AGREEMENT

Table of Contents

ARTICLE 1	INCORPORATION OF RECITALS.....	4
ARTICLE 2	DEFINITIONS	5
ARTICLE 3	REPRESENTATIONS AND WARRANTIES OF DEVELOPER	17
Section 3.1	Economic Assistance Required	17
Section 3.2	Authorized to Conduct Business.....	17
Section 3.3	Creditworthiness	18
Section 3.4	Developer Status and Ongoing Creditworthiness	18
Section 3.5	Development of the Developer Components.....	18
ARTICLE 4	DESIGNATION OF DEVELOPER.....	18
Section 4.1	Designation of the Developer	18
ARTICLE 5	CITY FINANCING AND ASSISTANCE.....	18
Section 5.1	Total Cost/City Share for Public Improvements	18
Section 5.2	TIF Revenues.....	19
Section 5.3	Rebate Agreement.....	19
Section 5.4	No Interest or Financing Costs to be Paid by the City	19
Section 5.5	No City Liability for Fees Unless Specified	19
ARTICLE 6	DEVELOPMENT OF THE WATER STREET PROJECT	
	PROPERTY.....	20
Section 6.1	Water Street Project	20
Section 6.2	Description of Water Street Project	20
Section 6.3	Compliance with Agreements/Laws.....	20
Section 6.4	Authorized Developer Representative	20
Section 6.5	Authorized City Representative	21
Section 6.6	Water Street Project Costs.....	21
Section 6.7	Developer Obligations and Conditions Precedent	22
Section 6.8	Developer’s Construction Responsibilities	22
Section 6.9	Due Diligence/Public Improvements	23
Section 6.10	Riverwalk Easements.....	23
Section 6.11	City Right of Access and Inspection.....	23
Section 6.12	Obligation to Obtain Permits.....	24
Section 6.13	Construction Contract for Public Improvements.....	24
Section 6.14	Performance and Payment Bonds.....	24
Section 6.15	Prevailing Wages.....	24
Section 6.16	Competitive Bids	24
Section 6.17	Conveyance of Parking Deck Property/Riverwalk Property.....	24
Section 6.18	Conveyance of Other Public Improvements.....	27
Section 6.19	Delay in Construction of Public or Private Improvements due to Force Majeure Event.....	28
Section 6.20	Risk of Loss.....	28
Section 6.21	Developer Documentation as to Private Improvements.....	28

Section 6.22	Vacation of Water Street Right-of-Way Payment to the City	28
Section 6.23	Parking Fee-In-Lieu Payment to the City	29
Section 6.24	Property Tax Objections and Appeals.....	29
Section 6.25	Release of Private Improvements from Certain Water Street Agreements	29
ARTICLE 7	METHOD OF PAYMENT FOR PUBLIC IMPROVEMENTS	29
Section 7.1	City Payment of Public Improvements	29
Section 7.2	Owner Pursuant to the Construction Contract.....	30
Section 7.3	Guaranteed Maximum Price	30
Section 7.4	Owner Contingency	30
Section 7.5	Construction Contractor Contingency	30
Section 7.6	Shared Savings	30
Section 7.7	Monthly Progress Meetings and Reports	31
Section 7.8	Construction Contractor Pencil Draws	31
Section 7.9	City Approval of Unit Prices.....	31
Section 7.10	City Funding of Construction Payment Escrow Account for Public Improvements/Reimbursement Authorization Procedures.	31
Section 7.11	Developer Funding of Construction Payment Escrow Account for Public Improvements	35
Section 7.12	Change Orders	35
Section 7.13	Scope Change Request (SCR)	35
Section 7.14	Prompt Payment Act	35
Section 7.15	Retainage	35
Section 7.16	Payment upon Issuance of a Public Improvements Direction.....	37
Section 7.17	Waivers of Lien.	37
ARTICLE 8	SURETIES REQUIRED/WARRANTIES	37
Section 8.1	Performance and Payment Bond for Parking Deck Property and Riverwalk Property.....	37
Section 8.2	Letter of Credit	38
Section 8.3	Maintenance Surety for Other Public Improvements.....	38
Section 8.4	Duplicate Originals.....	38
Section 8.5	Underlying Obligations Remain Despite Sureties.....	38
Section 8.6	Confirmation	38
Section 8.7	Warranties	38
ARTICLE 9	CITY’S RIGHTS IN PARKING DECK PROPERTY AND RIVERWALK PROPERTY SUPERIOR/NO SUBORDINATION	39
Section 9.1	Priority of Recording.....	39
Section 9.2	Developer’s Lenders	39
Section 9.3	Strict Limitation on Encumbrances	39
Section 9.4	Mechanic’s Liens.....	42
ARTICLE 10	HOTEL FLAG	43
Section 10.1	City Approval of Hotel Flag.....	43

Section 10.2	Change of Hotel Flag	43
Section 10.3	Approval Required for Change of Flag to a Lower STR Rating	43
Section 10.4	Parking Facility License Agreement to Operate in Tandem	43
Section 10.5	Continued Operation of the Hotel Facility	43
ARTICLE 11	TRANSFERS AND ASSIGNMENTS	44
Section 11.1	City Consent to Transfer Prior to Fifth Anniversary of the Rebate Commencement Date	44
Section 11.2	Submission and Approval Process	44
Section 11.3	Assumption of Obligations	45
Section 11.4	Transfer after the Fifth Anniversary of the Rebate Commencement Date	45
Section 11.5	Payment Pursuant to the Rebate Agreement to Single Entity	46
Section 11.6	No Transfer of Certain Interests.	46
Section 11.7	Collateral Assignment	47
Section 11.8	Lease or Mortgage of Water Street Project Property	47
Section 11.9	No Pre-Approval	47
Section 11.10	Developer Membership Transfer	49
Section 11.11	Transfer to or by Separate Lot Owners.....	49
Section 11.12	Failure to Strictly Comply.....	50
ARTICLE 12	NOTICE PROVISIONS.....	50
Section 12.1	Notice.....	50
Section 12.2	Change of Name or Address/Presumption of Validity	52
Section 12.3	Notice to Separate Lot Owners and Future Lenders.....	52
Section 12.4	Annual Verification	52
ARTICLE 13	PARKING FACILITY LICENSE AGREEMENT	53
Section 13.1	Parking Facility License Agreement	53
ARTICLE 14	PARKING OVERFLOW AGREEMENT.....	53
Section 14.1	Parking Overflow Agreement.....	53
ARTICLE 15	INDEMNIFICATION/THIRD PARTY LIABILITY	53
Section 15.1	Indemnification by the Developer	53
Section 15.2	Indemnification by Separate Lot Owner	55
ARTICLE 16	INSURANCE.....	56
Section 16.1	Water Street Project Insurance.....	56
Section 16.2	Insurer Ratings.....	57
ARTICLE 17	OPERATION OF THE WATER STREET PROJECT.....	58
Section 17.1	Authorized Developer Representative	58
Section 17.2	Authorized City Representative	58
Section 17.3	Parking and Traffic Management.....	58
ARTICLE 18	EVENTS OF DEFAULT	59
Section 18.1	Event of Default Due to Unpermitted Encumbrances.....	59
Section 18.2	Events of Default Relating to Completion	59

Section 18.3	Other Events of Default.....	60
Section 18.4	Environmental Defaults.....	63
Section 18.5	Lender Protection Provisions.....	63
Section 18.6	Consequences in the Event of an Uncured Default.....	66
Section 18.7	Defaults in other Water Street Agreements	69
Section 18.8	Separate Lot Owner Defaults	69
ARTICLE 19	TERM.....	69
Section 19.1	Term of this Agreement.....	69
ARTICLE 20	OTHER PROVISIONS	70
Section 20.1	Offset of Rebate Payments	70
Section 20.2	Real Property Taxes	70
Section 20.3	SSA 21/24 Expansion	70
Section 20.4	Traffic Management Study/Traffic Signal	70
Section 20.5	Recapture.....	71
Section 20.6	No Broker	71
ARTICLE 21	GENERAL PROVISIONS.....	71
Section 21.1	Time is of the Essence	71
Section 21.2	Defined Terms	71
Section 21.3	Severability	71
Section 21.4	Ambiguities.....	71
Section 21.5	Exhibits	71
Section 21.6	Attorneys' Fees and Costs	72
Section 21.7	Choice of Law/Venue.....	72
Section 21.8	Cumulative Rights and Remedies.....	72
Section 21.9	Copies of Agreements	72
Section 21.10	Construction	72
Section 21.11	No Waiver of Fees	72
Section 21.12	Headings.....	72
Section 21.13	Covenants Running with the Land.....	73
Section 21.14	Recordation	73
Section 21.15	No Waiver	73
Section 21.16	Amendments.....	73
Section 21.17	Survival	73
Section 21.18	Authorization to Execute.....	73
Section 21.19	Confidentiality of Information Regarding Creditworthiness.....	73
Section 21.20	Interest on Amounts Owed to City.....	74
Section 21.21	Effective Date	74

Exhibits:

- Exhibit 1 - Legal Description of Water Street Project Property
- Exhibit 2 - Depiction of Water Street Project Property
- Exhibit 3 - Legal Description of Office Building Land
- Exhibit 4 - Legal Description of Parking Deck Land
- Exhibit 5 - Legal Description of Riverwalk Land
- Exhibit 6 - Legal Description of Hotel Land
- Exhibit 7 - Legal Description of Theater Land
- Exhibit 8 - Water Street Project Construction Costs
- Exhibit 9 - Assumption of Obligations
- Exhibit 10 - Total Public Improvement Costs
- Exhibit 11 - Public Improvements Schedule of Values

WATER STREET REDEVELOPMENT AGREEMENT

This Redevelopment Agreement (this “**Agreement**”) is made and entered by and between the City of Naperville, Illinois, an Illinois municipal home rule corporation (the “**City**”), and Water Street Property Owner, LLC, a Delaware limited liability company with its principal office located at 401 S. Main Street, 3rd floor, Naperville, IL 60540 (the “**Developer**”). The City and the Developer are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. WHEREAS, the City of Naperville is a home rule unit of local government in accordance with Article VII, Section 6, of the 1970 Illinois Constitution and the laws of the State of Illinois; and

B. WHEREAS, the City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase tax revenues realized by the City, to foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and to otherwise further the best interests of the City; and

C. WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* as amended from time to time (also referenced herein as the “**TIF Act**”) to finance projects that eradicate blighted conditions and those qualifying as pre-blight through the use of tax increment allocation financing for redevelopment projects; and

D. WHEREAS, the Developer is the owner of record of real property located in the Water Street TIF District, which is legally described in Exhibit 1 attached hereto, and depicted on Exhibit 2 attached hereto (the “**Water Street Project Property**”); and

E. WHEREAS, on December 4, 2007 the City Council of the City of Naperville (“**City Council**”) adopted Ordinances 07-262, 07-263 and 07-264 (the “**Enabling Ordinances**”), approving a tax increment redevelopment plan (the “**Redevelopment Plan**”), approving the designation of the Water Street Redevelopment Project Area, and adopting tax increment allocation financing for the Water Street Redevelopment Project Area to induce redevelopment pursuant to the TIF Act; and

F. WHEREAS, pursuant to legislation approved by the Illinois State Legislature permitting an extension of the TIF District created by the City of Naperville, the City is extending the TIF term approved by the Enabling Ordinances by seven (7) years; and

G. WHEREAS, the Developer intends to improve the Developer Components, which represents a significant portion of the Water Street Redevelopment Project Area in accordance with this Agreement, the other Water Street Agreements, the Zoning/Entitlement Ordinances, and with all applicable Laws; and

H. WHEREAS, the Office Building Lot Owner intends to improve the Office Building Land in accordance with this Agreement, the other Water Street Agreements, the Zoning/Entitlement Ordinances, and with all applicable Laws; and

I. WHEREAS, the Water Street Project is a mixed use development which will include a Hotel Building, Loggia Building, Theater Building, Office Building, and related public infrastructure improvements, including but not limited to the Riverwalk Improvements, the Parking Deck Improvements, watermain, sanitary sewer, storm sewer and related appurtenances as shown on the Water Street District Final PUD Plat (North Phase/South Phase) approved by Ordinance 14-170; and

J. WHEREAS, on November 18, 2014 the City adopted Resolution 14-042 identifying Major Business Terms for development of the Water Street Project; and

K. WHEREAS, this Agreement and the other Water Street Agreements shall take the place of and supersede the Major Business Terms for the development of the Water Street Project adopted by the City by Resolution 14-042; and

L. WHEREAS, the Water Street Project will be developed consistently with the objectives established in the Water Street Vision Statement approved by Ordinance 06-242; and

M. WHEREAS, pursuant to the TIF Act, the City is authorized to make and enter into all contracts necessary or incidental to the implementation and furtherance of the Water Street Project, to issue sufficient debt obligations as evidence of the City's special and limited obligation to pay certain Public Improvement redevelopment project costs incurred in furtherance of the Redevelopment Plan and/or to apply or pledge certain Incremental Property Taxes to the construction of certain Public Improvements; and

N. WHEREAS, after careful consideration the City has determined that development of the Water Street Project Property as contemplated in Water Street District Final PUD, will: (i) be compatible with and will further the planning objectives of the City; (ii) permit orderly growth, planning, and development of the Water Street Project and adjacent properties; (iii) increase sales tax revenues realized by the City; (iv) foster increased economic activity within the City; (v) increase employment opportunities within the City; (vi) improve the environment of the City (vii) increase the assessed valuation of certain real estate situated within the City, and is (viii) consistent with the objectives of the Tax Increment Redevelopment Plan for Water Street TIF District; and (ix) will promote and enhance the general welfare of the City and its residents; and

O. WHEREAS, the City is authorized pursuant to its home-rule powers provided in Article 7 Section 6 of the Illinois Constitution, and by Sections 8-11-20 and 8-11-21 of the Illinois Municipal Code, to enter into economic incentive agreements relating to the development of property and to provide therein for the sharing or rebating of a portion of the City's share of: (i) the State of Illinois Retailers' Occupation Tax pursuant to 35 ILCS 120/1 *et seq.* (the "**Sales Tax Law**"), and (ii) the City's home rule Hotel and Motel Use Tax pursuant to Article 7, Section 6 of the Illinois Constitution and pursuant to Title 3, Chapter 10 of the Naperville Municipal Code (the "**Hotel Tax**"); and

P. WHEREAS, the City receives 1% Sales Tax Revenue from the sales of tangible personal property at retail pursuant to the Sales Tax Law; and

Q. WHEREAS, the City receives 4.4 % Hotel Tax Revenue on account of the Hotel Tax; and

R. WHEREAS, the City has determined that entering into the Rebate Agreement with the Developer pursuant to 65 ILCS 5/8-11-20 is in the best interest of the City and further makes the following findings:

1. The City has had a longstanding desire to achieve the goals set forth in the Water Street Vision Statement, approved by Ordinance 06-279;
2. Portions of the Water Street Project Property have been vacant and the buildings on the property have remained underutilized for a period of at least one (1) year;
3. The construction of the Water Street Project is expected to create job opportunities within the City;
4. The construction of the Water Street Project will serve to further the economic activity in adjacent areas by stimulating shopping and dining in downtown Naperville;
5. Without the Rebate Agreement, construction of the Water Street Project on the Water Street Project Property (other than the Office Building Land) would not be feasible;
6. The Developer meets the high standards of creditworthiness and financial strength as demonstrated by specific evidence of equity investment of not less than 10% of the total Water Street Project Construction Costs;
7. The Water Street Project will strengthen the commercial base of downtown Naperville; and
8. The construction of the Developer Components will enhance the tax base of the City through: (a) increased property tax revenue, (b) increased Hotel Tax Revenue, (c) increased Sales Tax Revenue; and (d) the creation of new jobs.

S. WHEREAS, the Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Developer Components but for certain tax increment financing incentives to be provided by the City for Public Improvements associated with the Developer Components, and other municipal incentives which the City is willing to provide pursuant to the provisions of 65 ILCS 5/8-11-20 subject to the terms and conditions contained and referenced herein. The Parties acknowledge and agree that but for said TIF funding and economic development incentives, the Developer cannot successfully and economically develop the Developer Components and construct the Developer Components in a manner satisfactory to the City. Therefore, the City has determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth herein and in the other Water Street Agreements; and

T. WHEREAS, The City is authorized by Article 7, Section 10(a) of the Illinois Constitution to contract with a corporation in any manner not prohibited by law and to use its home rule powers to establish credit, revenues, and other resources to pay costs and to service debt related to such contract; and

U. WHEREAS, among other powers and authority, the City has the authority to expend funds for economic development that the City deems necessary or desirable for the promotion of economic development within the City, pursuant to Section 8-1-2.5 of the Illinois Municipal Code; and

V. WHEREAS, the City Council, as the corporate authority of the City of Naperville, has duly considered all necessary petitions and taken all necessary actions to enter into this Agreement, and has further duly considered the terms and conditions of this Agreement and, by a Resolution duly adopted by a majority vote of said corporate authority, has authorized the City Manager to execute, and the City Clerk to attest, to this Agreement on behalf of the City; and

W. WHEREAS, this Agreement has been submitted to the Corporate Authorities of the City for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

X. WHEREAS, this Agreement has been submitted to the Developer for consideration and review, and the Developer has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all actions precedent to the execution of this Agreement by the Developer have been undertaken and performed in the manner required by law.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained and referenced, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and by virtue of the City's authority under the laws of the State of Illinois, including but not limited to its home rule authority, pursuant to which this Agreement is entered, the Parties hereby agree as follows:

ARTICLE 1 INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the City and of the Developer according to the tenor and import of the statements in such Recitals.

ARTICLE 2 DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the Recitals hereto and as follows:

Architect: means: (a) as of the Effective Date, Sullivan Goulette Wilson, Ltd.; and (b) if for any reason Sullivan Goulette Wilson, Ltd. shall no longer be the Developer's architect, a replacement licensed architect hired by the Developer (and approved by the City, such approval not to be unreasonably withheld) to act as the architect in connection with construction of the Public Improvements and Private Improvements of the Developer Components.

Authorized City Representative: means the City Engineer or his designee as provided in Section 6.5 hereof.

Authorized Developer Representative: has the meaning set forth in Section 6.4 of this Agreement.

Boardwalk: means the boardwalk to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Change Order: means a written order to the Developer signed by the City, authorizing a change in scope, a change in the Plans and Specifications for Public Improvements, or the method or manner of performance and/or adjustment in the Guaranteed Maximum Price, which may also result in a Field Change.

Chief Building Official: means the City of Naperville's appointed Chief Building Official or his designee.

City Attorney: means the City of Naperville's City Attorney.

City Code: means the City of Naperville Municipal Code, as amended from time to time.

City Council: has the meaning set forth in Recital E.

City Engineer: means the City of Naperville's City Engineer.

City Finance Director: means the appointed Director of Finance of the City of Naperville.

City Manager: means the City Manager of the City of Naperville, or his designee.

City Payment Percentage: has the meaning set forth in Section 7.1 of this Agreement.

Construction Commencement: means the actual commencement of any stage of construction to be completed by the Construction Contractor under the Construction Contract for Public Improvements after issuance of the building permits therefor as evidenced by (at least) the on-

site mobilization of the Construction Contractor and physical alteration to the Water Street Project Property in advancement of the construction of the Public Improvements.

Construction Contract for Public Improvements: means the contract between the Developer and the Construction Contractor for construction of the Public Improvements.

Construction Contract Savings: means the amount by which the GMP exceeds the total amount of the final Cost of the Work upon completion plus the Construction Manager Fee.

Construction Contractor: means: (a) as of the Effective Date, Lend Lease (US) Construction Inc., a Florida corporation; and (b) if for any reason Lend Lease (US) Construction Inc., a Florida corporation, shall no longer be the Developer's construction contractor, a replacement bonded general contractor or construction manager hired by the Developer (and approved by the City, such approval not to be unreasonably withheld) responsible for construction of the Public Improvements and Private Improvements of the Developer Components.

Construction Manager Fee: means a fee paid to the Construction Contractor, which is included in the GMP costs listed on Exhibit 11 attached hereto.

Construction Payment Escrow Account: means the account at the Title Company established pursuant to the Construction Payment Escrow Agreement.

Construction Payment Escrow Agreement: means that certain Construction Payment Escrow Agreement between the Developer, the City and the Title Company for disbursing the City's and the Developer's funds to pay for Public Improvements.

Corporate Authorities: means the City Council of the City of Naperville, DuPage and Will Counties, Illinois.

Cost of the Work: means the costs necessarily incurred in order to complete the Public Improvements pursuant to the Construction Contract for Public Improvements, as specified in the approved Plans and Specifications for Public Improvements, and which are consistent with the costs set forth on Exhibit 11 attached hereto.

Cost Over-runs: means the amount by which the actual cost to complete the Public Improvements exceeds the GMP, except: (a) where such amounts are agreed to be paid by the City pursuant to Section 7.3 of this Agreement; or (b) where such excess results from a change in the Plans and Specifications for Public Improvements made by the City after the giving of the Self-Help Notice.

Cure: means to remedy (to the reasonable satisfaction of the City) the circumstances giving rise to the Event of Default which are described in the Notice of Default.

Cure Period: means, collectively, that period of time equal to the sum of: (i) the Developer Cure Period (if any); plus (ii) the Lender Cure Period.

Curing Lender: means any Lender which elects to exercise its respective rights to Cure an Event of Default pursuant to Article 18 of this Agreement.

Developer: means: (a) Water Street Property Owner, LLC, a Delaware limited liability company (which is the initial Developer hereunder), (b) any Transferee of the Hotel Land and Hotel Facility which is identified as the successor Developer in a recorded Assumption of Obligations executed, delivered and recorded in accordance with Article 11; and (c) a Mortgage Transferee acquiring title to the Hotel Land and Hotel Facility, in whole or in part, by a foreclosure or deed in lieu of foreclosure. For purposes of clarity, a Separate Lot Owner shall not be the Developer for purposes of this Agreement or any of the Water Street Agreements.

Developer Components: means all portions of the Water Street Project, excluding the Office Building; provided, however, that with respect to the Riverwalk Property, the Parking Deck Property and the Other Public Improvements, any such portion of the Water Street Project shall cease to be a Developer Component upon the conveyance thereof to the City pursuant to the Water Street Agreements.

Developer Cure Period: means that period of time under this Agreement (or in the other Water Street Agreements) within which a Cure may be made of an Event of Default may be made by the Developer.

Developer Payment Percentage: has the meaning set forth in Section 7.1 of this Agreement.

Effective Date: has the meaning set forth in Section 21.21 of this Agreement.

Enabling Ordinances: has the meaning set forth in Recital E.

Event of Default: means any of those events or circumstances specified in Sections 18.1, 18.2, 18.3 and 18.4 of this Agreement.

Existing Lien: means the lien for not more than Five Million Dollars (\$5,000,000) which exists on the Water Street Project Property at the time this Agreement is recorded which lien shall be fully released at the Developer's closing on its Mortgage Loan and a release thereof recorded with the DuPage County Recorder.

Field Change: means a change to the approved Plans and Specifications for Public Improvements pursuant to a Change Order or Scope Change Request which has been reviewed and approved by the City Engineer.

Force Majeure Event: shall have the meaning set forth in Section 6.19 of this Agreement.

Fountain: means the fountain shown on the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended, which is a Private Improvement.

Future Lender: means any mortgagee named in a Future Mortgage.

Future Lender Transferee: means an affiliate of a Future Lender that obtains title to the portions of the Water Street Project Property encumbered by a Future Mortgage pursuant to a foreclosure sale or a deed-in-lieu of foreclosure

Future Mortgage: means any mortgage or other encumbrance on any portion of the Private Improvements of the Water Street Project Property or on any portion of the land underlying such Private Improvements.

Guaranteed Maximum Price (GMP): means: (a) the Cost of Work, plus (b) the Construction Manager Fee plus (c) all other direct expenses associated with the Construction Contract for Public Improvements as identified on Exhibit 11 attached hereto.

Hotel Building: means the Hotel Building to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Hotel Facility: means the entrance of the 1st floor of the Hotel Building and floors 2-5 of the Hotel Building, the Pedestrian Bridge, the Hotel Building entrance on the first floor of the Loggia Building, floors 2-5 of the Loggia Building as set forth in the Plans and Specifications for Private Improvements. The Hotel Facility shall include approximately 158 guest rooms as provided by PUD Ordinance 14-170. The Hotel Facility shall exclude the banquet facility space and fifth floor restaurant space as identified in the Plans and Specifications for Private Improvements.

Hotel Facility Owner: means: (i) the Developer as of the Effective Date; and (ii) any Transferee of the Hotel Land as evidenced by such Transferee's execution of an Assumption of Obligations executed, delivered and recorded in accordance with Article 11.

Hotel Flag: means the hotel brand that operates within the Hotel Facility.

Hotel Indigo: means the Hotel Flag for the Hotel Facility pursuant to the final PUD approval per Ordinance 14-170 which, as of the Effective Date of this Agreement, is ranked as "Upscale" in STR ratings.

Hotel Land: means that portion of the Water Street Project Property, including but not limited to air rights, on: (i) Lot 1 of the Final Plat of Subdivision for Water Street District - South Phase approved by Ordinance 14-169; and (ii) Lot 1 of the Final Plat of Subdivision for Water Street District - North Phase approved by Ordinance 14-168, which lots are legally described on Exhibit 6 attached hereto, on which the Hotel Facility is intended to be built. Notwithstanding the foregoing, to the extent that the Parking Deck Improvements overhang the first floor of the Hotel Building, to be defined by the Vertical Subdivision Plat, said air rights will be owned by the City.

Hotel Master Lease: means a written lease agreement executed by the Hotel Facility Owner with a Hotel Master Tenant pursuant to which the entire Hotel Facility (and not less than all of the Hotel Facility) is leased to the Hotel Master Tenant.

Hotel Master Tenant: means an entity affiliated with the Hotel Facility Owner which enters into a Hotel Master Lease with Hotel Facility Owner.

Hotel Operator: means the Hotel Facility Owner, provided, however, that the Hotel Facility Owner may designate (pursuant to the Parking Facility License Agreement) that the Hotel Master Tenant shall become the Hotel Operator, in which event the Hotel Master Tenant shall

become the Hotel Operator for the term of the Hotel Master Lease (at the end of which time the Hotel Facility Owner shall thereupon become the Hotel Operator again).

Hotel Tax Revenue: means the revenue received by the City on account of the 4.4% Hotel Tax imposed by the City pursuant to Title 3, Chapter 10 of the Naperville Municipal Code in effect as of the Effective Date of this Agreement.

Incremental Property Taxes: means that portion of the ad valorem taxes, if any, arising from the taxes levied upon the Water Street Project Property, which taxes are actually collected and which are attributable to the increases in the then current equalized assessed valuation of each taxable lot, block, tract or parcel of all portions of the Water Street Project Property in the TIF District over and above the total Initial Equalized Assessed Valuation of the Water Street Project Property, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the Enabling Ordinances, and the Water Street Agreements, which is attributable to the Water Street Project Property and includes any replacement, substitute or amended taxes.

Initial Equalized Assessed Valuation: means the initial calendar year equalized assessed value of the Water Street Project Property as certified by the DuPage County Clerk.

Laws: means state and federal statutes, common law, and regulations, the Naperville Municipal Code, and all other applicable laws, ordinances, or regulations of any government body having jurisdiction over any aspect of the Water Street Project or the Water Street Project Property, as all of the same may be amended from time to time.

Lender Acknowledgement: means that certain Financing Confirmation and Acknowledgement Agreement executed by the City, the Mortgage Lender, and the Mezzanine Lender with respect to the Water Street Agreements.

Lender: means each of the Mortgage Lender, the Mezzanine Lender and any Future Lender

Lender Control Event: has the meaning set forth in Section 18.5.3 of this Agreement.

Lender Cure Period: means that period of time provided for in Article 18 of this Agreement (or in any of the other Water Street Agreements) within which a Lender may effect a Cure of an Event of Default under this Agreement or a default under any of the other Water Street Agreements.

Loggia Building: means the loggia building to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Mezzanine Lender: means: (i) as of the Effective Date, Medley Opportunity Fund II, L.P., its successors and assigns, (ii) any transferee of the Mezzanine Loan, (iii) any transferees of the Mezzanine Lender regardless of whether such occurs by way of a forced sale or an assignment in lieu of such forced sale or otherwise, and (iv) any Replacement Mezzanine Lender that complies with Section 9.3.6 hereof.

Mezzanine Loan: means that certain mezzanine loan made by Mezzanine Lender to the sole member of the Developer to facilitate construction of the Developer Components, which is secured by a pledge of 100% of the equity interests in the Developer, and which is not, and will not be, secured by any Unpermitted Encumbrance.

Minor Change Order: means any change to the work to be performed under the Construction Contract for Public Improvements pursuant to the Plans and Specification for Public Improvements which: (a) does not modify the Plans and Specifications for Public Improvements; and (b) does not increase any GMP line item cost to be paid by the City as specified in Exhibit 10 attached hereto.

Mortgage Lender: means: (i) as of the Effective Date, Fifth Third Bank, as agent for the lenders identified in the construction loan agreement referenced in the Permitted Mortgage; (ii) any Transferee of the Mortgage Loan and the Permitted Mortgage, (iii) any Mortgage Transferee, all of which shall be bound by the terms and provisions of this Agreement and the remaining Water Street Agreements, as may be amended; and (iv) any Replacement Mortgage Lender in accordance with Section 9.3.5 hereof.

Mortgage Loan: means that certain first mortgage construction loan made by the Mortgage Lender to the Developer to facilitate construction of the Developer Components which is secured by the Permitted Mortgage.

Mortgage Transferee: means the Mortgage Lender or an affiliate of the Mortgage Lender that obtains title to the portions of the Developer Components owned by the Developer pursuant to a foreclosure sale or a deed-in-lieu of foreclosure

Notice of Default: means a written notice from the City to the Developer, any Separate Lot Owner, and any Lender specifying that an Event of Default has occurred and the Cure Period in which a Cure may be effectuated; provided that (with respect to Separate Lot Owners and Future Lenders, such shall have first complied with the terms of Section 12.3 hereof).

Office Building: means the office building to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Office Building Land: means that portion of the Water Street Project Property, including but not limited to air rights, on Lot 3 of the Final Plat of Subdivision for Water Street District - South Phase approved by Ordinance 14-169, and legally described on Exhibit 3 attached hereto, on which the Office Building is intended to be built.

Office Building Lot Owner: means: (i) Water Street Lot Venture, LLC, an Illinois limited liability company, and an affiliate of the Developer, which as of the Effective Date is the Separate Lot Owner of the Office Building Land; and (ii) any Transferee of the Office Building Land as evidenced by such Transferee's execution of an Assumption of Obligations executed, delivered and recorded in accordance with Section 11.11 hereof.

Ordinance: means any ordinance approved by the City Council as may be amended.

Other Public Improvements: means a subset of the term defined herein as “Public Improvements” which subset: (a) excludes the Riverwalk Improvements and the Parking Deck Improvements; and (b) includes the following components of the Water Street Project: streets, alleys, landscape improvements, sanitary sewer, storm sewer and related appurtenances as detailed on Exhibit 10 attached hereto.

Owner’s or Developer’s Acknowledgement & Acceptance (OAA): means the Owner’s or Developer’s Acknowledgement & Acceptance (OAA) executed by the Developer and approved by Ordinance 14-170, as may be amended.

Owner Contingency: shall have the meaning set forth in Section 7.4 hereof.

Parking Deck Conveyance Documents: means those documents, including but not limited to the Release of the Permitted Mortgage, described in the Purchase and Sale Agreement which shall be sufficient to convey title to the Parking Deck Property (land and improvements) by warranty deed to the City in accordance with the Purchase and Sale Agreement.

Parking Deck Final Plans and Specifications: means a subset of the term defined herein as “Plans and Specifications for Public Improvements” which subset includes the architectural and structural plans and specifications necessary to construct the Parking Deck Improvements, as approved by the City.

Parking Deck Improvements: means the parking deck Public Improvements to be constructed on Lot 2 and a portion of Lot 3 of the Final Plat of Subdivision for Water Street District - South Phase approved by Ordinance 14-169 which will contain between 519 to 529 parking spaces in accordance with Ordinance 14-170 (Approving the Final PUD Plat - South Phase/North Phase), and Ordinance 13-021 (Vacating a Portion of the Water Street Right-of-Way), as may be amended from time to time, which Parking Deck Improvements shall be constructed in accord with the Parking Deck Final Plans and Specifications.

Parking Deck Land: means that portion of the Water Street Project Property, including but not limited to air rights as denoted on the Vertical Subdivision Plat, on Lot 2 and a portion of Lot 3 of the Final Plat of Subdivision for Water Street District - South Phase approved by Ordinance 14-169, and legally described on Exhibit 4 attached hereto, on which the Parking Deck Improvements will be constructed.

Parking Deck Property: means the Parking Deck Land together with all Parking Deck Improvements which shall be conveyed to the City of Naperville as provided herein and in the Purchase and Sale Agreement.

Parking Facility License Agreement: means that certain Water Street Parking Facility License Agreement between the City and the Developer providing for the use of the Reserved Parking Spaces.

Parking Overflow Agreement: has the meaning set forth in Article 14 hereof.

Party [or Parties]: means the City and/or the Developer, and their successors, assigns, and Transferees as permitted herein (including Separate Lot Owners), as the context requires.

Pedestrian Bridge: means the pedestrian bridge to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Permitted Mortgage: means, collectively: (a) a mortgage made by the Developer in favor of the Mortgage Lender; (b) an assignment of leases and rents made by the Developer to the Mortgage Lender; and (c) a uniform commercial code financing statement naming the Developer as debtor and the Mortgage Lender as secured party, each of which is recorded against the Developer Components, including the Parking Deck Property and Riverwalk Property, until the Release of same, as described in Article 9 hereof.

Person: means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

Petitioner: means the individual or entity who was the Petitioner on each of the Zoning/Entitlement Ordinances.

Plans and Specifications for Private Improvements: means, with respect to the Private Improvements, the plans and specifications submitted to the City upon which the building permits for the Private Improvements are issued by the City.

Plans and Specifications for Public Improvements: means, with respect to the Public Improvements, the Final Engineering Plans and Specifications prepared by V3 Companies for Marquette Properties, the Final Landscape Plans prepared by Hitchcock Design Group, the Architectural Plans prepared by Architect and any other plans and specifications approved in writing by the City Engineer and /or the Chief Building Official as applicable whether approved prior to or after the Effective Date of this Agreement.

Plaza: means the plaza to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Prevailing Wage Laws: means 820 ILCS 130/0.01, as the same may be amended or supplemented from time to time (and all rules and regulations promulgated pursuant thereto).

Private Improvements: means all improvements for the Water Street Project which are not specified as Public Improvements herein, including but not limited to the Hotel Building, Loggia Building, Theater Building, Office Building, Pedestrian Bridge, Plaza, Boardwalk, and Fountain.

Public Improvements: includes the (i) Parking Deck Improvements, (ii) Riverwalk Improvements, and (iii) Other Public Improvements, each as described in the Plans and Specifications for Public Improvements.

Public Improvements Escrow Agreement: means that certain Water Street Public Improvements Escrow Agreement between the City, the Developer, Title Company and the Mortgage Lender which is entered into in furtherance of the Purchase and Sale Agreement.

Public Improvements Recording Direction: means a notice issued by the City to the Title Company pursuant to the Public Improvements Escrow Agreement upon the occurrence of an

Uncured Default by which the City may unilaterally direct the Title Company to date, record and/or deliver to the City the Parking Deck Conveyance Documents and/or the Riverwalk Conveyance Documents.

Public Improvements Schedule of Values: means the detailed breakdown of Public Improvement Cost itemized on Exhibit 11 attached hereto

PUD Ordinance: means Ordinance 14-170 passed by the City of Naperville Approving a Major Change to the Final Planned Unit Development, Final PUD Plats, a Deviation to Section 6-7D-4 (B4: Required Conditions), and the Owners Acknowledgement and Acceptance for the Water Street District – North Phase/South Phase.

Purchase and Sale Agreement: means that certain Purchase and Sale Agreement between the City and the Developer pursuant to which the City will purchase from the Developer (and the Developer will sell to the City) the Parking Deck Land and the Riverwalk Land as said Land is to be improved with Parking Deck Improvements and Riverwalk Improvements constructed by the Developer and paid for by the City.

Rebate Agreement: means that certain Rebate Agreement between the City and the Developer approved by the City pursuant to 65 ILCS 5/8-11-20 and pertaining to the Developer Components.

Rebate Payments: has the meaning set forth in Section 7 of the Rebate Agreement.

Redevelopment Plan: means the Redevelopment Plan for the Water Street TIF District adopted pursuant to Ordinance 07-262, as identified in Recital E .

Redevelopment Project Area: means the Redevelopment Project Area for the Water Street TIF District adopted pursuant to Ordinance 07-262, as identified in Recital E .

Redevelopment Project Costs: means those qualified redevelopment project costs authorized by the TIF Act and this Agreement, including without limitation, the costs of the TIF Eligible Expenses.

Release: means the Release of the Permitted Mortgage as to the Parking Deck Property and Riverwalk Property, as described in Article 9 hereof, which Release must be in a recordable form.

Reserved Parking Spaces: means one hundred and twenty (120) parking spaces in the Parking Deck Improvements to be reserved for use of the Hotel Facility as referenced in Article 13 hereof and as provided for in the Parking Facility License Agreement. The Reserved Parking Spaces are included within the total number of parking spaces as provided in the definition of Parking Deck Improvements.

Riverwalk Conveyance Documents: means those documents, including but not limited to the Release of the Permitted Mortgage, described in the Purchase and Sale Agreement which shall be sufficient to convey title to the Riverwalk Property (land and improvements) by warranty deed to the City in accordance with the Purchase and Sale Agreement.

Riverwalk Easements: means those easements described in Section 6.10 hereof.

Riverwalk Improvements: means those improvements to be constructed on the Riverwalk Land, the Webster Street right-of-way, and the Riverwalk Easements, all as depicted on PUD Ordinance 14-170.

Riverwalk Land: means that portion of the Water Street Project Property, including air rights, depicted as Lot 4 on the Final Plat of Subdivision for Water Street District - North Phase per Ordinance 14-168, and legally described on Exhibit 5 attached hereto, on which the Riverwalk Improvements will be constructed.

Riverwalk Property: means the Riverwalk Land together with the Riverwalk Improvements which will be conveyed to the City.

Sales Tax Revenue: means 1% of the gross receipts from the sale of tangible personal property at retail received by the City pursuant to the State of Illinois Retailers' Occupation Tax, 35 ILCS 120/1 *et seq.* from transactions subject to taxation at the Developer Components pursuant to the Sales Tax Law. Sales Tax Revenue for purposes of this Agreement encompasses only those taxes in effect as of the Effective Date of this Agreement and specifically excludes the City's food and beverage tax revenue imposed pursuant to Section 3-1-9 of the Naperville Municipal Code and excludes any home rule sales tax should such a tax be implemented subsequent to the Effective Date of this Agreement.

Scope Change Request (SCR): means a written order to the Developer signed by the City, for work not originally included in the approved Plans and Specifications for Public Improvements, authorizing a change order that may or may not adjust the GMP, which may also result in a Field Change.

Separate Lot Owner: means: (i) any Office Building Lot Owner; and (ii) any Theater Building Lot Owner.

Smith Travel Research ("STR"): means STR, Inc., a company which tracks supply and demand data for the hotel industry and provides "chain scales" as to major hotel chains and brands.

Special Service Areas: has the meaning set forth in 35 ILCS 200/27-5, as such may be amended or supplemented from time to time (and all rules and regulations promulgated pursuant thereto).

Special Tax Allocation Fund: means the designated special tax allocation fund the TIF Act for the Redevelopment Project Area.

State: means the State of Illinois.

Substantial Completion: is the date when all of the following has occurred: (a) construction of the Public Improvements in accordance with the Plans and Specifications for Public Improvements is substantially complete so the City can legally occupy and utilize the said Public Improvements, or designated portion thereof, for their intended use as certified by the Architect on the applicable AIA Form (or another from acceptable to the City and the Developer); (b) all

requisite certificate(s) of occupancy, temporary or otherwise and all other applicable approvals permitting legal use or occupancy of the Public Improvements, or the applicable portion thereof, have been issued and delivered by all governmental authorities; and (c) only minor punch list items which do not interfere with such use and occupancy, if any, remain incomplete.

Taxable Bonds: means the taxable bonds issued by the City to provide funds for construction of the Reserved Parking Spaces.

Theater Building: means the theatre building to be constructed in accordance with the Water Street District Final PUD Plat approved by Ordinance 14-170, as may be amended.

Theater Building Land: means that portion of the Water Street Project Property, including but not limited to air rights, on Lot 2 of the Final Plat of Subdivision for Water Street District - North Phase approved by Ordinance 14-168, and legally described on Exhibit 3 attached hereto, on which the Theater Building is intended to be built.

Theater Building Lot Owner: means: (i) the Developer as of the Effective Date; and (ii) any Transferee of the Theater Building Land as evidenced by such Transferee's execution of an Assumption of Obligations executed, delivered and recorded in accordance with Section 11.11 hereof.

TIF Act: has the meaning set forth in Recital C.

TIF District means the Water Street TIF District adopted pursuant to City Ordinances 07-262, 07-263, and 07-264 on December 4, 2007.

TIF District Tax Increment: All ad valorem taxes arising from levies upon taxable real property in the TIF District by taxing districts and tax rates determined in the manner provided in paragraph (c) of Section 11-74.4-9 of the TIF Act attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property over and above the initial equalized assessed value of all such property in the TIF District and shall be allocated to and when collected shall be paid to the City Finance Director who shall credit such taxes to the Special Tax Allocation Fund required by the TIF Act to be used in accordance with this Agreement.

TIF-Eligible Expenses: TIF eligible Redevelopment Project Costs as defined in the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et seq.*) and outlined within the Water Street TIF District Redevelopment Plan and Project, adopted by Ordinance 07-262. The TIF Eligible Expenses shall be limited to costs incurred subsequent to December 4, 2007.

Title Company: means Chicago Title Insurance Company.

Total Public Improvement Costs: means those costs listed on Exhibit 10 attached hereto to be paid for by the Developer and the City. The Total Public Improvement Costs are comprised of: (a) the Guaranteed Maximum Price plus (b) the Owner Contingency consisting of three percent (3%) of the Guaranteed Maximum Price of those line items specified on Exhibit 10 attached hereto.

Transferee: means the person or entity to whom a Transfer has been made.

Transfer: for purposes of this Agreement and subject to the provisions contained herein, the term “Transfer” includes any assignment, sale, transfer, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of all or any part of the Water Street Project Property (except for the conveyance of the Parking Deck Property or the Riverwalk Property to the City), or any beneficial interest therein, in whole or in part, by voluntary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise. Transfer shall also include any assignment, sale or transfer of any rights in any of the Water Street Agreements.

Uncured Default: means an Event of Default for which a Notice of Default has been given by the City for which: (i) no Cure is made within the Cure Period, and (ii) the City may thereafter pursue the remedies set forth in Article 18 hereof.

Unpermitted Encumbrance: has the meaning provided for in Article 9 hereof.

Vertical Subdivision Plat: means the vertical subdivision plat prepared by the Developer to be approved by the City which will delineate the Parking Deck Property from any other property not owned, or to be owned, by the City and which will create appropriate air parcels and delineate and include as part of the plat that portion of the Parking Deck Improvements that overhangs the first floor of the Hotel Building.

Water Street Agreements: means the following agreements, including all exhibits referenced therein or attached thereto (which agreements and exhibits may be amended from time to time), which pertain to the Water Street Project:

- (a) This Water Street Redevelopment Agreement (which includes all plans and specifications and other exhibits submitted and approved by the City for Public Improvements and Private Improvements whether approved prior to or after the Effective Date of this Agreement.)
- (b) Rebate Agreement
- (c) Purchase and Sale Agreement
- (d) Parking Facility License Agreement
- (e) Parking Overflow Agreement
- (f) Public Improvements Escrow Agreement
- (g) Construction Payment Escrow Agreement
- (h) Water Street CCRS (Covenants, Conditions and Restrictions)
- (i) Water Street Easement/Encroachment Agreements (Pedestrian Bridge; Balconies; Transformer)

- (j) OAA – Owner’s Acknowledgement and Acceptance (per Ordinance 14-170)
- (k) Lender’s Acknowledgment Agreement (which must be fully executed prior to recordation of any other Water Street Agreements)

In the event of a conflict between the Water Street Agreements, the provisions of this Agreement shall control except where the provisions of one or more of the other Water Street Agreements are more specific in which case the more specific or detailed provisions shall control.

Water Street Project: has the meaning set forth in Section 6.2 hereof.

Water Street Project Construction Costs: means all costs to construct the Developer Components estimated to be Ninety-Three Million One Hundred Thousand Dollars (\$93,100,000) which costs are set forth on Exhibit 8 attached hereto.

Water Street Project Property: means the property on which the Water Street Project is to be constructed which is located at 112-134 and 140 Water Street, 336 S. Webster Street, and 141 Aurora Avenue, Naperville, Illinois in DuPage County, and which is legally described on Exhibit 1 attached hereto and depicted on Exhibit 2 attached hereto (the Water Street Final PUD Plat - North Phase/South Phase) which Exhibits are attached hereto.

Zoning/Entitlement Ordinances: means the following Ordinances, including but not limited to all exhibits thereto: Ordinance 14-169 approving the Final Plat of Subdivision for Water Street – South Phase; Ordinance 14-168 approving the Final Plat of Subdivision for Water Street – North Phase; Ordinance 14-170 approving a Major Change to the PUD and Final PUD Plats for the Water Street District – North Phase/South Phase, variance to Section 6-7D-4 (B4: Required Conditions), and the Owner’s Acknowledgment and Acceptance; Ordinance 14-171 approving a temporary use to allow for a parking lot to be located at 141 Aurora Avenue through June 30, 2016; Ordinance 14-172 approving right-of-way encroachments including a pedestrian bridge and transformers in the Water Street and Webster rights-of-way; and Ordinance 13-021 Vacating a Portion of the Water Street Right-of-Way.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 3.1 Economic Assistance Required. The Developer represents and warrants that it requests economic assistance from the City in order to construct the Developer Components, and that but for the economic assistance to be given by the City as provided herein, the Developer Components of the Water Street Project as contemplated would not be economically acceptable to the Developer.

Section 3.2 Authorized to Conduct Business. The Developer represents and warrants that it is an entity authorized to do business in the State of Illinois and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action. The Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and good standing as a Delaware limited liability company, and shall at all times remain in good standing and authorized to conduct business in the State of Illinois through the Illinois Secretary of State’s Office, so long as the Developer maintains an

interest in the Water Street Project or has any other remaining obligation pursuant to the terms of this Agreement or the other Water Street Agreements.

Section 3.3 Creditworthiness. The Developer represents and warrants that it meets the high standards of creditworthiness and financial strength as demonstrated by specific evidence of equity investment of not less than ten percent (10%) of the total Water Street Project Construction Costs.

Section 3.4 Developer Status and Ongoing Creditworthiness. The Developer represents that it will remain solvent and able to pay its debts with respect to the Developer Components as they mature, and that it will remain ready and able to fulfill its financial and other obligations under this Agreement and the remaining Water Street Agreements. Until completion of the Developer Components, the Developer shall provide the City on a quarterly basis with reasonable evidence that it remains in a creditworthy status with sufficient funding, or access to funding, to proceed with and complete the Developer Components. The Developer further represents that it is not in default with respect to any indenture, loan agreement, mortgage, deed, note, or any other agreement related to the borrowing of money to which the Developer is a party or any of its assets is bound that would materially adversely affect its ability to comply with its obligations hereunder.

Section 3.5 Development of the Developer Components. Upon the City's approval of the Plans and Specifications for the Public Improvements, and the Developer's receipt of required building permits and governmental approvals, the Developer will redevelop the Developer Components in compliance with the Water Street Agreements, the Enabling Ordinances, the Zoning/Entitlement Ordinances, and all applicable Laws. To the extent any Separate Lot Owner owns the Theater Building Land or the Office Building Land, such Separate Lot Owner shall in all events take title to the Theater Building Land or the Office Building Land subject to the terms of this Agreement (and the other Water Street Agreements to the extent they apply to the Theater Building Land or the Office Building Land), the Enabling Ordinances, the Zoning/Entitlement Ordinances, and all applicable Laws.

ARTICLE 4 DESIGNATION OF DEVELOPER

Section 4.1 Designation of the Developer. The City hereby designates the Developer as the Developer for the Developer Components of the Water Street Project subject to the terms of this Agreement and the remaining Water Street Agreements.

ARTICLE 5 CITY FINANCING AND ASSISTANCE

Section 5.1 Total Cost/City Share for Public Improvements. The total cost of the Water Street Project Construction Costs for Private Improvements and Public Improvements comprising the Developer Components as noted on Exhibit 8 attached hereto is anticipated to be approximately Ninety-Three Million One Hundred Thousand Dollars (\$93,100,000), which does not include the value of the Office Building Land and the Office Building contemplated to be constructed on the Office Building Land. The City and the Developer acknowledge that the final

amount of the Water Street Project Construction Costs may be more or less than the aforementioned amount, but in no event shall such be less than Eighty-Eight Million Dollars (\$88,000,000). In any event the Developer shall at all times meet the high standards of creditworthiness and financial strength described in Section 6.1.6 of the Rebate Agreement. The Developer shall be solely responsible for paying for all Private Improvements (except that the Separate Lot Owner of the Office Building Land shall be responsible for paying for the Office Building to be constructed on the Office Building Land). The Public Improvements shall be financed by a combination of: (i) TIF funding, (ii) General Obligation Bonds, (iii) Food and Beverage Tax and (iv) the Developer funding, which includes, but is not limited to, payment for the vacation of Water Street right-of-way, fee-in-lieu of parking costs, and the Developer Payment Percentage for the Public Improvements as detailed on Exhibit 10 attached hereto.

Section 5.2 TIF Revenues. Subject to the terms and conditions of this Agreement, the City will pay for Public Improvements that constitute TIF-Eligible Costs, as defined herein and in the Act including the Parking Deck Improvements, the Riverwalk Improvements, and the Other Improvements described on Exhibit 10 attached hereto as the “Public” share. The City will be reimbursed for such payment from TIF revenues as such revenues become available. No TIF revenues will be available for or contribute to any Private Improvement costs.

Section 5.3 Rebate Agreement. The Parties have acknowledged and the City has made the findings required by 65 ILCS 5/8-11-20 that the Developer Components are not financially viable but for a financial incentive to offset the cost of the Private Improvements (excluding the Office Building). Concurrently with the execution and recordation of this Agreement, the Parties shall execute and record a Rebate Agreement against the Developer Components. The Rebate Agreement shall also provide, subject to detailed terms set forth therein, that so long as the Developer is operating a Hotel Flag at the Hotel Facility in accord with the provisions of Article 10 hereof, Rebate Payments equal to 50% of Sales Tax Revenues and 100% of Hotel Tax Revenues shall be paid to the Developer, based upon the percentages payable to the City under the Sales Tax Law and Hotel Tax in effect as of the Effective Date of this Agreement. In no event shall the Rebate Payments exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) during the twenty (20) years following the Rebate Commencement Date. The Rebate Payments shall cease after twenty (20) years whether or not the maximum amount of \$7,500,000 has been paid.

Section 5.4 No Interest or Financing Costs to be Paid by the City. At no time shall the City be liable to pay any interest or financing costs associated with any aspect of the Public Improvements constructed as part of the Water Street Project.

Section 5.5 No City Liability for Fees Unless Specified. The City shall not be responsible to reimburse the Developer or any other individual or entity for any legal or other professional or consultant fees unless expressly provided for herein or as specifically identified and listed as a City cost on Exhibit 11 attached hereto.

ARTICLE 6
DEVELOPMENT OF THE WATER STREET PROJECT PROPERTY

Section 6.1 Water Street Project. The Developer has proposed and the City has agreed that the development of the Water Street Project on the Water Street Project Property shall proceed in accordance with the Zoning/Entitlement Ordinances. The Petitioner obligations and agreements set forth or referenced in the Zoning/Entitlement Ordinances are hereby declared and agreed to be obligations of: (a) the Developer hereunder and under the other Water Street Agreements, to the extent that such Petitioner obligations apply to the Developer Components; and (b) each Separate Lot Owner hereunder and under the other Water Street Agreements, to the extent that such Petitioner obligations apply to the Office Building Land or the Theater Building Land (as applicable). The Water Street Project shall proceed in accordance with the provisions of this Agreement, the remaining Water Street Agreements, and all applicable Laws. Approval by the City Council and an authorized representative of the Developer shall be required to enter into this Agreement and the remaining Water Street Agreements, except that a representative of the Developer and the City Manager may enter into the: (i) Water Street Easement/Encroachment Agreements; (ii) the Water Street CCRs as to the operation, repair, and maintenance of the Parking Deck Improvements; (iii) the Lender Acknowledgement; (iv) approval of creditworthiness and Assumption of Obligations pursuant to Article 11; (v) the Construction Payment Escrow Agreement; and (vi) the Riverwalk Easements.

Section 6.2 Description of Water Street Project. The “**Water Street Project**” shall mean that certain mixed-use development (as described in Section 6.1) consisting of the Hotel Building, Hotel Facility, Parking Deck Improvements, Loggia Building, Theater Building, Office Building, Pedestrian Bridge, Riverwalk Improvements, streetscape improvements and various utilities, to be developed pursuant to the PUD Ordinance and in accordance with the terms of this Agreement and the other Water Street Agreements. The Developer shall design and construct the Developer Components of the Water Street Project. The Office Building Lot Owner shall design and construct the Office Building on the Office Building Land.

Section 6.3 Compliance with Agreements/Laws. The Developer shall construct, develop, operate and maintain the Developer Components in accord with the Enabling Ordinances, the Water Street Agreements including this Agreement, the Zoning/Entitlement Ordinances, and all other applicable Laws. To the extent any Separate Lot Owner owns the Theater Building Land or the Office Building Land, such Separate Lot Owner shall in all events take title to the Theater Building Land or the Office Building Land subject to the Enabling Ordinances, this Agreement (and the other Water Street Agreements to the extent they relate to the Theater Building Land or the Office Building Land), the Zoning/Entitlement Ordinances, and all other applicable Laws.

Section 6.4 Authorized Developer Representative. The Developer hereby designates Nicholas M. Ryan, as its authorized representative with the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions described in this Agreement and the remaining Water Street Agreements for and on behalf of the Developer with the effect of binding the Developer (the “**Authorized Developer Representative**”). The Developer shall have the right to change its Authorized Developer Representative by providing the City Manager and the City Engineer with

written notice of such change which notice shall be sent in accordance with the notice provisions contained in Article 12 hereof. The Authorized Developer Representative shall also have the responsibilities identified in Section 17.1 hereof.

Section 6.5 Authorized City Representative. The City Engineer, or his designee, shall be the City’s authorized representative (the “**Authorized City Representative**”) and shall serve as liaison to the City Manager and the City Council. The City Engineer shall have the authority to take certain acts without action of the City Manager and/or the City Council to the extent that such action(s) are provided for herein. The Authorized City Representative shall also have the responsibilities identified in Section 17.2 hereof.

Section 6.6 Water Street Project Costs. The total cost of the Developer Components (private and public components) is as set forth in Section 5.1 hereof. The Developer shall be solely responsible for paying for: (a) all Private Improvements (except that the Separate Lot Owner of the Office Building Land shall be responsible for paying for the Office Building to be constructed on the Office Building Land) and (b) for the Developer’s share of the Public Improvements described on Exhibit 10 attached hereto.

Section 6.6.1 Funding of Public Improvements. The City and the Developer shall pay their respective shares of the Public Improvements as set forth in Article 7 of this Agreement and as set forth in the Construction Payment Escrow Agreement. The City shall use the vacation of Water Street right-of-way payment and parking fee-in-lieu of payment described in Sections 6.22 and Section 6.23 toward funding of the Public Improvements. Notwithstanding anything in this Agreement or any other Water Street Agreement to the contrary, whether expressed, inferred or implied, and recognizing that the City has an obligation to the public and to other taxing districts, the City shall not be obligated to pay the Developer, or any other person or entity (including contractors or subcontractors), any money or credit or other amount or consideration under this Agreement or any other Water Street Agreement in excess of the GMP amounts specified on Exhibit 10 attached hereto, unless the Developer shall have received the prior written approval from the City to incur such costs.

Section 6.6.2 Funding of Private Improvements. No public funds of any kind shall be spent on Private Improvements or other costs associated with the Water Street Project that do not directly pertain to the Parking Deck Property, the Riverwalk Property, or Other Public Improvements. Except as specifically provided with respect to the Permitted Mortgage in Article 9 hereof, Private Improvements shall not be cross-secured by the Public Improvements, the Parking Deck Land, or the Riverwalk Land in any manner, but shall be separately financed and secured.

Section 6.6.3 Bonds Issued by the City for the Water Street Project.

6.6.3.1 Reimbursement of Interest Paid on Tax Exempt Bonds Issued by the City. When it closes on its Mortgage Loan, the Developer shall reimburse the City \$103,849.00, which amount represents the interest paid by the City to date on tax exempt bonds issued on May 1, 2014 by the City for the Water Street Project.

6.6.3.2 Taxable Bonds Issued by the City. The costs attributable to the Taxable Bonds issued by the City for construction costs associated with the Reserved Parking Spaces shall be reimbursed to the City as provided in the Parking Facility License Agreement.

Section 6.7 Developer Obligations and Conditions Precedent. This Agreement is expressly conditioned upon the Developer complying in full with the timeframes set forth in this Section 6.7. The schedule of dates set forth in this Section 6.7 is conservative. The Developer anticipates proceeding with the Developer Components well in advance of these dates. Force Majeure Events shall not operate to extend these timeframes, unless the City agrees to such an extension in writing. There shall be no Developer Cure Period for failure to comply with the dates set forth in this Section 6.7 unless the City agrees to a Cure Period in writing.

- (a) **On or before January 30, 2016,** the Developer shall demonstrate to the City's satisfaction that it has obtained financing commitments for the Developer Components sufficient to cover its share of all costs thereof. The City shall be provided the specifics of the financing commitments for the Developer Components in a form and detail reasonably satisfactory to the City Finance Director. The City shall not make any payments under this Agreement or any other Water Street Agreement until such time as the Developer has met its obligations under this Section 6.7(a).
- (b) **On or before April 30, 2016:** (i) the Developer shall obtain a building permit for the Parking Deck Improvements and Hotel Building, said permits not to be unreasonably withheld by the City; and (ii) Construction Commencement shall have occurred. The City shall not be obligated to pay the Developer any funds for the Parking Deck Improvements or other Public Improvements unless the Developer has met its obligations under this Section 6.7(b).
- (c) **On or before October 30, 2018,** the Developer shall obtain a temporary occupancy permit for the shells of the Hotel Building, the Parking Deck Improvements, the Loggia Building, and the Theater Building, said permits not to be unreasonably withheld by the City. The foregoing does not apply to the Office Building as it is anticipated that the Office Building component will be constructed during a later phase of the Water Street Project.
- (d) **On or before January 31, 2016,** the Developer shall enter into the remaining Water Street Agreements, or such other time as is mutually agreed upon in writing by the City Manager and the Developer.

Section 6.8 Developer's Construction Responsibilities. The Developer shall be responsible for the design and construction of all aspects of the Developer Components, including but not limited to Public Improvements and Private Improvements as provided herein. The Office Building Lot Owner shall be responsible for the design and construction of the Office Building to be constructed on the Office Building Land. The Developer and Office Building Lot Owner each retains the right to control the manner of its performance of these responsibilities (as to its respective portion of the Water Street Project) and is an independent contractor and not an

employee of the City. The Construction Contractor and any other contractors or subcontractors of the Developer, any Separate Lot Owner or the Construction Contractor shall likewise not be considered to be under the control and direction of the City or employees of the City. The Developer shall cause the Developer Components to be designed and constructed: (i) in accord with this Agreement, including but not limited to the Plans and Specifications for Private Improvements and the Plans and Specifications for Public Improvements for the Public Improvements; (ii) in compliance with the timeframes set forth or referenced herein; (iii) in accord with other applicable Water Street Agreements; (iv) in compliance with applicable Laws; (v) and with that degree of care, knowledge, skill, and diligence ordinarily exercised by reputable members of the those professions performing work hereunder currently practicing under similar conditions within the State of Illinois. The Office Building Lot Owner shall cause the Office Building to be designed and constructed in accord with the applicable Water Street Agreements and in compliance with applicable Laws. The Developer shall cause the prompt revision and correction of any error, omission, or negligent act affecting the Public Improvements without additional compensation. The City's acceptance of any services provided by or on behalf of the Developer hereunder shall not relieve the Developer of its responsibility to cause such errors or omissions to be promptly corrected.

Section 6.9 Due Diligence/Public Improvements. The Developer shall pursue construction and completion of the Developer Components in accord with the terms hereof and with the other Water Street Agreements with due diligence, in good faith, and without delay, subject only to extensions of time to the extent required as a result of any Force Majeure Events as permitted herein. Once the Developer has commenced construction of the Parking Deck Improvements and/or the Riverwalk Improvements the Developer shall complete construction of thereof within thirty (30) months. The Developer shall give written notice, or shall cause the Construction Contractor to give written notice, (which may be by email), to the City Engineer as to the commencement date of construction.

Section 6.10 Riverwalk Easements. The Riverwalk Easements are generally described as follows: (1) An easement to be located on 315 S. Main Street (commonly known as the River Main Development); and (2) An easement to be located on Naperville Township Property at 139 Water Street. Upon completion and approval of the Riverwalk Improvements by the City Engineer, said easements shall be conveyed to the City. The form of said Riverwalk Easements shall be subject to approval of the City Attorney.

Section 6.11 City Right of Access and Inspection. The City Engineer, and/or his designee, shall at all reasonable times have free and complete access to the Water Street Project Property and to the construction site (subject to safety requirements reasonably imposed by the Construction Contractor) during site preparation and construction of the Public Improvements in order to monitor the progress of construction, to ensure that construction is proceeding in accord with this Agreement and the other Water Street Agreements, and to inspect at any stage of construction as the City Engineer deems necessary or appropriate. The Developer shall, and/or shall cause the Construction Contractor to, promptly provide the City Engineer and/or his designee with any information or documentation reasonably requested prior to and during the construction of the Public Improvements, including but not limited to records of all contracts, sub-contracts, drawings, samples, purchases, materials, and other construction related documents

including all revisions. The provisions of this Section 6.11 shall be subject to the provisions contained in Section 6.8 hereof.

Section 6.12 Obligation to Obtain Permits. Before commencement of construction of the Developer Components, the Developer shall, at its expense, secure or cause to be procured from the City or any other governmental entity having jurisdiction over such construction, development, or work, any permits or other documentation required for the initial development of the Developer Components, such permits not to be unreasonably withheld by the City. Before commencement of construction of the Office Building, the Office Building Lot Owner shall, at its expense, secure or cause to be procured from the City or any other governmental entity having jurisdiction over such construction, development, or work, any permits or other documentation required for the initial development of the Office Building.

Section 6.13 Construction Contract for Public Improvements. Prior to execution thereof, the Developer shall deliver to the City a copy of the proposed Construction Contract for Public Improvements with the Construction Contractor selected to construct the Public Improvements for the City Engineer's prior written approval. Following full execution of said Construction Contract for Public Improvements, the Developer shall deliver a certified copy of such to the City. Prior to any proposed modification or amendment of the Construction Contract for Public Improvements, the Developer shall provide the City Engineer with said proposed modification or amendment for his prior written approval; provided, however, the City's approval is not needed for Minor Change Orders. At the request of the City Engineer, the Developer will also provide copies of subcontracts entered into for work to be performed in connection with the Public Improvements within five (5) days of a request therefore.

Section 6.14 Performance and Payment Bonds. See Article 8 of this Agreement.

Section 6.15 Prevailing Wages. The Developer covenants and agrees to pay, and to contractually obligate and cause the Construction Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate in accordance with the Prevailing Wage Laws, to all of their respective employees working on constructing the Public Improvements. The Developer shall require that contractors and subcontractors submit, on a monthly basis, a certified payroll to the City Engineer.

Section 6.16 Competitive Bids. The Developer has solicited competitive bids from qualified subcontractors for the Public Improvements described in the Plans and Specifications for the Public Improvements and the amounts set forth in Exhibit 11 attached hereto reflect the bid amounts approved for said Public Improvements.

Section 6.17 Conveyance of Parking Deck Property/Riverwalk Property.

A. Parking Deck Property.

- (1) **Purchase Price for Parking Deck Property.** Except as provided in Article 18 hereof (in the event of an Uncured Default), the City shall pay the Developer \$100.00/s.f. or a total of \$3,242,000 for the Parking Deck Property which constitutes the footprint of the Parking Deck Improvements (with which payment the City shall acquire all air rights

associated with the Parking Deck Property as created in a vertical subdivision plat to be prepared by a professional land surveyor on behalf of the Developer and approved by the City).

(2) **Timing of Payment for Parking Deck Land.**

(a) Upon execution of the Purchase and Sale Agreement, the City shall deposit: (i) \$1,621,000 (the “**Downpayment**”), which represents 50% of the payment for the Parking Deck Property into the Construction Payment Escrow Account to be used by the Developer for construction of the Developer Components as provided in said Construction Payment Escrow Agreement and in this Agreement; and (ii) \$1,621,000 (the “**Balance**”) with Title Company pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement, which amount represents the remaining 50% of the payment for the Parking Deck Land (including air rights) and which funds shall be paid to the Developer as set forth Section 6.17(A)(2)(b) hereof (unless said sum is returned to the City as provided in Section 18.6.4 hereof upon the occurrence of an Uncured Default). The Downpayment shall be released from the Construction Payment Escrow Account to pay for Public Improvements and Private Improvements (other than the Office Building) only upon satisfaction of the following conditions:

- (i) The Developer and the City executing and recording this Agreement and the Purchase and Sale Agreement;
- (ii) The Developer, the City, the Mortgage Lender and the Title Company executing and recording the Public Improvements Escrow Agreement;
- (iii) The Developer obtaining a building permit for the Parking Deck Improvements;
- (iv) The Developer depositing the Parking Deck Conveyance Documents (including but not limited to a Warranty Deed, a Release of the Permitted Mortgage, and a Bill of Sale for the Parking Deck Property) in escrow at Title Company pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement; and
- (v) Verification through a title commitment provided by the Developer and issued by Title Company reflecting that there are no liens or encumbrances on the Parking Deck Property other than those identified as “Permitted Exceptions” in the Purchase and Sale Agreement.

- (b) Upon completion and the City's acceptance of the Parking Deck Improvements, the Developer shall transfer fee simple title thereto by Warranty Deed to the City free and clear of any liens or encumbrances (other than those created by the Water Street Agreements). At closing on the Parking Deck Property, the Title Company Escrow Agent shall be directed to record the Release of all mortgages, liens, or other encumbrances on said Parking Deck Property with the DuPage County Recorder, and then so long as only those exceptions which are permitted by this Agreement remain on said Property, the Escrow Agent record the Warranty Deed, and deliver the Bill of Sale for said Parking Deck Property to the City and pay the Developer (or the Mortgage Lender, if the Mortgage Lender so directs) the Balance then held in escrow (except that interest thereon shall be returned to the City).
- (c) In the event the City delivers a Public Improvements Recording Direction, except as provided in Section 18.6.6, the City shall be entitled to unilaterally direct the Escrow Agent to return the Balance to the City.

B. Riverwalk Property.

- (1) In consideration of the Rebate Payments provided for under the Rebate Agreement, and other consideration provided in the Water Street Agreements, upon completion and acceptance of the improvements associated with the Riverwalk Property, the Developer shall convey to the City fee simple title to the Riverwalk Property (including but not limited to all improvements which are part thereof). Said conveyance shall be at no additional charge or cost and shall be free and clear of any liens, mortgages or encumbrances other than those approved by the City Manager and the City Attorney. The Developer shall at the same time as it makes the deposits for the Parking Deck Property, described above, deposit into escrow pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement, all Riverwalk Conveyance Documents, including but not limited to a Warranty Deed, a Release of the Permitted Mortgage, and a Bill of Sale for the Riverwalk Property.
- (2) Closing on the Riverwalk Property shall occur subject to:
 - (a) The Developer and the City executing this Agreement and the Purchase and Sale Agreement;
 - (b) The Developer, the City, the Mortgage Lender and the Title Company executing the Public Improvements Escrow Agreement ;

- (c) The Developer depositing the Riverwalk Conveyance Documents (including but not limited to a Warranty Deed, a Release of the Permitted Mortgage, and a Bill of Sale for the Riverwalk Property) in escrow at the Title Company; and
 - (d) Verification through a title commitment provided by the Developer and issued by Title Company reflecting that there are no liens or encumbrances on the Riverwalk Property other than those which are approved in writing by the City Manager and the City Attorney.
- (3) At closing on the Riverwalk Property, the Title Company Escrow Agent shall be directed to record the Release of all mortgages, liens, or other encumbrances on said Property with the DuPage County Recorder, and then so long as only those exceptions which are permitted by this Agreement remain on said Property, the Escrow Agent shall be directed to record the Warranty Deed and deliver the Bill of Sale for said Riverwalk Property to the City.

Section 6.17.1 The City will pay for construction of Parking Deck Improvements on the Parking Deck Land and the Riverwalk Improvements on the Riverwalk Land as such improvements are constructed subject to the provisions set forth herein, in the Public Improvements Escrow Agreement, the Purchase and Sale Agreement, the Construction Payment Escrow Agreement, and in other Water Street Agreements as applicable.

Section 6.17.2 In the event of an Uncured Default as provided herein and in the Public Improvements Escrow Agreement affecting either the Parking Deck Land, the Parking Deck Improvements, the Riverwalk Land, or the Riverwalk Improvements, the City shall have the unilateral right to direct the Title Company Escrow Agent to record the Release and the remainder of the Parking Deck Conveyance Agreements and/or Riverwalk Conveyance Documents, as applicable, with the DuPage County Recorder in order to convey clear title in fee simple by warranty deed to such Property or Properties to the City. In such event (as to the Parking Deck Property), the City shall be automatically deemed to be relieved of any obligation to pay the Balance of the purchase price for the Parking Deck Land described above.

Section 6.17.3 Additional provisions with respect to conveyance of the Parking Deck Property and the Riverwalk Property to the City are contained in the Purchase and Sale Agreement and the Public Improvements Escrow Agreement.

Section 6.18 Conveyance of Other Public Improvements. The City shall pay its share of the Other Public Improvements as they are constructed as provided herein and in the Construction Payment Escrow Agreement. Upon completion and approval of the Other Public Improvements, the Developer shall convey clear and unencumbered title to the Other Public Improvements to the City by a Bill of Sale in a form approved by the City Attorney at no further charge or cost. The City shall take appropriate action to accept said Bill of Sale. In the event of an Uncured Default, the Developer and the City shall cooperate with each other to deliver a Bill

of Sale conveying to the City those Other Public Improvements which have been completed in accordance with the Plans and Specifications for Public Improvements.

Section 6.19 Delay in Construction of Public or Private Improvements due to Force Majeure Event. Except as set forth in Section 6.7, whenever a period of time is provided for in this Article for the Developer to do or perform any act or obligation with respect to construction of Public Improvements or Private Improvements, the Developer shall not be liable for any delays or inability to perform because of a Force Majeure Event. “**Force Majeure Event**” means one of the following events, but only to the extent that such event renders it substantially impossible for the Developer to pursue completion of the Public Improvements or Private Improvements: (1) area or industry-wide strikes, (2) floods, fire, or other casualty not caused by the Developer or the Construction Contractor or any Subcontractor, (3) acts of God, including severe weather conditions which are abnormal for the period in question, (4) unavailability of, or inability to obtain, labor or materials by reason of acts of any governmental body which affect the supply or availability of labor or materials, and (5) national emergency, war, rebellions or riots. At no time shall an event be deemed a Force Majeure Event by virtue of increased costs or other financial or economic considerations.

Section 6.19.1 Notwithstanding the foregoing Section 6.19, any extension of time to perform necessitated as a result of an Force Majeure Event shall be only for the actual amount of time the Developer is so delayed. If the Force Majeure Event continues for more than ten (10) business days from the date performance is affected, the City may require the Developer to collaborate with the City on alternative approaches to completion of the required performance.

Section 6.19.2 In order to be entitled to additional time to perform an act or obligation provided for in the this and the other Water Street Agreements pursuant to a claim of the existence of a Force Majeure Event, the Developer must give written notice to the City Engineer within ten (10) calendar days of the discovery of the Force Majeure Event, by the Developer. Notwithstanding the notice provisions contained in Article 12 hereof, notice of a Force Majeure Event may also be given to the City representatives identified in Article 12 by means of email.

Section 6.20 Risk of Loss. The Developer shall be liable for all risk of loss or damage to Public Improvements provided for under this Agreement and the other Water Street Agreements until such time as said Public Improvements have been accepted by the City, and in the case of the Parking Deck Property and the Riverwalk Property, until such time as title to said Properties has been conveyed to the City as provided herein, in the Public Improvements Escrow Agreement, and the Purchase and Sale Agreement.

Section 6.21 Developer Documentation as to Private Improvements. Within ten (10) days of request from the City, the Developer shall make available to the City Engineer or his designee any records reasonably requested by him with respect to the Private Improvements (other than the Office Building) until the conveyance of the Parking Deck Property to the City.

Section 6.22 Vacation of Water Street Right-of-Way Payment to the City. The Developer shall comply with the requirements for the right-of-way vacation described in

Ordinance 13-021, including but not limited to paying the City fair market value for said vacated property, or \$403,512.00 which shall be paid to the City by the Developer at the time the Developer closes on its Mortgage Loan for the Developer Components.

Section 6.23 Parking Fee-In-Lieu Payment to the City. The City shall be paid a fee of \$577,954.45 (\$143,077.40 for the Hotel Building and \$434,877.05 for the Office Building) for those parcels not included within the Downtown Parking Boundary pursuant to Ordinance 08-200, such fee to be paid as follows:

- (i) \$143,077.40 for the parking fee-in-lieu payment for the Hotel Building shall be paid to the City by the Developer at the time the Developer closes on its Mortgage Loan for the Developer Components.
- (ii) \$434,877.05 for the parking fee-in-lieu payment for the Office Building shall be paid by the Office Building Lot Owner to the City at the time of issuance of temporary occupancy permit for the Office Building. For purposes of this Agreement, a certificate of occupancy will include issuance of temporary occupancy with respect to timing of payment. Any adjustments in the Office Building parking fee-in-lieu payment will be recalculated in accordance with Ordinance 08-200. For purposes of clarity, the fee described in this Section 6.24(ii) shall only be owed by the Separate Lot Owner of the Office Building and (if not paid): (i) may not be offset against the Rebate Payments; and (ii) shall not result in an Event of Default with respect to any portion of the Developer Components.

Section 6.24 Property Tax Objections and Appeals. The Developer recognizes that the City has legitimate interests and concerns regarding the valuation and assessment of the Developer Components for real estate tax purposes. Accordingly, the Developer shall notify the City Attorney prior to the commencement or initiation of any protest or appeal by the Developer of the real property valuation of the Developer Components, or any part thereof, established by the DuPage County Assessor.

Section 6.25 Release of Private Improvements from Certain Water Street Agreements. At such time as the Parking Deck Property and the Riverwalk Property are conveyed to the City in accordance with this Agreement, the City agrees to execute and deliver to the Developer and the Office Building Lot Owner (and the Developer and the Office Building Lot Owner shall countersign) a recordable release of the Private Improvements (and the land underlying such Private Improvements) from the Purchase and Sale Agreement and the Public Improvements Escrow Agreement.

ARTICLE 7 METHOD OF PAYMENT FOR PUBLIC IMPROVEMENTS

Section 7.1 City Payment of Public Improvements. The City shall pay for its share of Public Improvements identified on Exhibit 10 attached hereto, listed within the “Public” column, and in accordance with this Section 7.1 (the “**City Payment Percentage**”). The Developer shall pay for its share of Public Improvements identified on Exhibit 10 attached

hereto, listed within the “Developer” column (the “**Developer Payment Percentage**”). It is understood and agreed that all costs listed on Exhibit 10 attached hereto are inclusive of all Cost of the Work, direct costs, Construction Manager Fee, insurance, bonds, costs incurred by the Construction Contractor, costs incurred by the Developer and any other cost for the Public Improvements not listed above. No other costs will be paid by the City, unless specifically authorized by a Change Order approved by the City. Payments made by the City will be based on actual work completed, or payments necessary for the purchase of materials or to fabricate components, which amounts have been approved by the City.

Section 7.2 Owner Pursuant to the Construction Contract. For purposes of this section, where provisions of the Construction Contract for Public Improvements identify action or benefit to the “Owner”; the City is the “Owner” for the City Payment Percentage of the Public Improvements as listed on Exhibit 10 attached hereto, and the Developer is the “Owner” for the Developer Payment Percentage of the Public Improvements listed on Exhibit 10 attached hereto.

Section 7.3 Guaranteed Maximum Price. The Guaranteed Maximum Price (GMP) is inclusive of the Cost of Work, Construction Manager Fee and any other direct expenses associated with the Construction Contract for Public Improvements as identified on Exhibit 11 attached hereto. The City shall not pay more than the Guaranteed Maximum Price unless a Change Order is authorized by the City for costs to be billed to the City. The Guaranteed Maximum Price shall in no event exceed the amounts identified in Exhibit 10 attached hereto or include any interest costs or charges. If the actual cost for the Public Improvements is more than the approved GMP values detailed on Exhibit 10 attached hereto, the Developer and/or the Construction Contractor shall still only be entitled to be reimbursed by the City for the amounts for those Public Improvements itemized on Exhibit 10 attached hereto, and the Developer shall, and/or the Developer shall cause the Construction Contractor to, pay and absorb the additional costs; provided, however, to the extent that there are material changes to the scope or specifications of the Public Improvements and approved in writing by the City as an approved Change Order, then the City shall be responsible to include those increased costs as a Scope Change Request (discussed in Section 7.13 hereof) and to pay for same.

Section 7.4 Owner Contingency. The owner contingency is comprised of 3% of the value of the Guaranteed Maximum Price for those line items specified on Exhibit 10 attached hereto (“**Owner Contingency**”). The City shall not be obligated to pay any costs above the Guaranteed Maximum Price without written approval of a Change Order by the City Engineer. Any Change Order exceeding the Owner Contingency must be approved by the City Council. If the use of any amount of the Owner Contingency is not approved in writing by the City Engineer, that amount shall not be paid by the City.

Section 7.5 Construction Contractor Contingency. The Construction Contract for Public Improvements includes a contingency for use by the Construction Contractor which is included in the GMP (the “**Contractor Contingency**”). The Contractor Contingency may be utilized by the Construction Contractor (without any consent of the City being required) in accordance with the terms of the Construction Contract for Public Improvements.

Section 7.6 Shared Savings. If there is a Construction Contract Savings after Substantial Completion of all of the Public Improvements is achieved, then the Construction

Contract Savings shall be shared as follows: (a) 70% of the cost savings shall accrue to the benefit of and be shared by the Developer and the City (in proportion to the applicable City Payment Percentage and the applicable Developer Payment Percentage, which shall differ depending on the actual line item specified on Exhibit 10 attached hereto with respect to which the Construction Contract Savings is realized); and (b) 30% of the cost savings shall accrue to the benefit of the Construction Contractor. By way of example, if there is a Construction Cost Savings of \$100,000 with respect to the completion of the Stormwater Detention line item identified on Exhibit 10 attached hereto then: (a) \$30,000 of such Construction Cost Savings shall be payable to the Construction Contractor; (b) \$39,900 (57% of \$70,000) of such Construction Cost Savings shall accrue to the benefit of the Developer; and (c) \$30,100 (43% of \$70,000) of such Construction Cost Savings shall accrue to the benefit of the City.

Section 7.7 Monthly Progress Meetings and Reports. The Developer shall conduct progress meetings, which shall be scheduled on a monthly basis at minimum, to be held in person by the Developer, the Construction Contractor, and the City. Within five (5) business days following the monthly progress meeting, the Developer shall cause the Construction Contractor to provide the City Engineer and his designees with written monthly progress reports. Each monthly report shall include the following information: (a) a detailed description of all work performed since the last monthly progress meeting, (b) a description of any problems or difficulties, if any, which have been encountered in completing the Public Improvements in accordance with the Water Street Agreements; and (c) the work on the Public Improvements that is anticipated to be performed in the upcoming month (including the estimated cost to perform such work). Within five (5) days of receipt, the Developer shall provide the City Engineer with copies of any written reports prepared by the Construction Contractor insofar as they pertain in any way to the Public Improvements, including but not limited to the reports referenced in Section 2.2.11 of the Construction Contract for Public Improvements.

Section 7.8 Construction Contractor Pencil Draws. On a monthly basis, the Developer will cause the Construction Contractor to conduct a “Pencil Draw Meeting”, where the contractor will review the value of work performed in the last month and the value of work anticipated to complete by the end of the month. This information will be reviewed with the City and the Developer in order for the Construction Contractor to prepare the “Pencil Draw”, which serves as a draft invoice to be submitted as a request for payment. It is anticipated that the Pencil Draw meeting shall be conducted by the 25th day of every month in order to submit a request for payment by the 5th day of the following month to cover work completed in the prior month.

Section 7.9 City Approval of Unit Prices. The City shall have the right to pre-approve the unit prices applicable to any Change Orders.

Section 7.10 City Funding of Construction Payment Escrow Account for Public Improvements/Reimbursement Authorization Procedures.

7.10.1 Invoices and Lien Waivers. Upon completion of any portion of the work related to construction of the Public Improvements, the Developer shall submit a request for payment of the City Payment Percentage of the cost of said portion of the work (including the cost of the materials incorporated into the Public Improvements) via an invoice detailing all costs being billed to the City in a form approved by the City

Engineer (the “**Payment Request**”), which Payment Request shall include a waiver of lien from the Construction Contractor. All Payment Requests shall be sent to:

City Engineer
Naperville Municipal Center
400 South Eagle Street
Naperville, IL 60540

7.10.2 Review, Approval, and Deposit of City Funds into the Construction Escrow. Subject to: (a) Section 7.17 hereof, (b) the City Engineer’s approval of the Payment Request, (c) the City’s right to withhold payment, as set forth in Section 7.10.3 hereof, and (d) the prerequisites to payment set forth in Section 7.10.4 hereof, the City shall deposit a payment with respect to the applicable Payment Request into the Construction Payment Escrow Account established by the Title Company within ten (10) calendar days of receipt of such Payment Request in accordance with this Section and the Construction Payment Escrow Agreement, unless additional time is agreed to by the City and the Developer. It is acknowledged by the City and the Developer that the process for submitting lien waivers shall be as set forth in Section 7.17 hereof.

7.10.3 City Right to Withhold Payment. In connection with any Payment Request, the City shall have the right to withhold payment, or partial payment, to the Construction Payment Escrow Account if:

(a) The quality of the construction of all or a portion of the Public Improvements for which payment is sought is not in accordance with the Plans and Specifications for Public Improvements; or

(b) The Public Improvements for which payment is sought are not in compliance with any applicable Laws; or

(c) Claims subject to the provisions of Article 15 have been made against the City as a result of the Developer’s or the Construction Contractor’s performance of construction of the Public Improvements or as a result of the performance of sub-contractors, sub-consultants, or sub-vendors and such claims have not been resolved to the reasonable satisfaction of the City; or

(d) Mechanic’s liens have been filed in connection with the Developer’s or the Construction Contractor’s performance hereunder (and such have not been bonded or insured over by the Developer); or

(e) The City has actual knowledge that any of the products or services provided hereunder are defective or damaged, requiring correction, repair, or replacement;

(f) The City has undertaken to correct defective products or services provided by the Developer or the Construction Contractor’s sub-contractors, sub-consultants, or sub-vendors; or

(g) The City has issued a Notice of Default under any of the Water Street Agreements, provided that the right to withhold payment or partial payment pursuant to this clause (g) shall only remain in effect until such time as a Cure has been effected to the satisfaction of the City.

In the event the City questions or seeks clarification of any item set forth in a Payment Request, the City shall give the Developer written notice thereof and shall pay the remainder of the approved Payment Request. Once any matter that causes the City to withhold payment of any portion of a Payment Request is remedied to the reasonable satisfaction of the City, the City agrees to fund that portion of the Payment Request for which it had previously withheld payment pursuant hereto within ten (10) calendar days.

7.10.4 Prerequisites to City Payment. As a prerequisite to the City making payments in response to any Payment Request, the Developer shall, as of the date of such Payment Request:

(a) certify to the City that the Developer is duly organized and validly existing;

(b) certify to the City that the Developer has the right, power and authority to submit the Payment Request and to perform its obligations under this Agreement;

(c) certify to the City that no Event of Default under this Agreement exists;

(d) certify to the City that the requested disbursement is for Redevelopment Project Costs which are qualified for payment under this Agreement and applicable Laws;

(e) certify to the City that none of the items for which payment is requested has already been paid for by the City;

(f) certify to the City that the payment is due and owing (or has already been paid) from the Developer to its construction manager, contractor, subcontractor or material supplier or others;

(g) certify to the City that the Developer has obtained all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary and applicable to construct the portion of the Public Improvements to which such Payment Request applies;

(h) certify to the City that that no lien (other than the Permitted Mortgage) exists against the Parking Deck Property, the Riverwalk Property or any of the Other Public Improvements, except those that the Developer, in good faith and based upon reasonable grounds, is contesting (in which event the Developer shall provide the City with a lien bond within thirty (30) days of notice of the lien);

(i) certify to the City that that the work for which payment is sought has been completed;

(j) certify to the City that good and sufficient (partial or full) waivers of liens with respect to the payment requested have been obtained;

(k) provide proof in a form reasonably acceptable to the City, such as a contractor's sworn statement and architect's certification, that the Developer and/or the Construction Contractor is or was obligated to make the payments for which reimbursement is sought;

(l) provide such information as is reasonably necessary for the City to determine that reimbursement is being sought for a Redevelopment Project Cost and is otherwise due and payable hereunder; and

(m) provide the warranties required by Section 8.7 hereof prior to final payment by the City to the Developer.

7.10.5 Developer Documentation as to Public Improvements/Right to Audit.

The Developer shall keep and maintain separate, complete, accurate, legible, and detailed books and records related to the construction of the Public Improvements. Said records shall reflect and fully disclose the actual costs paid, or to be paid, for each category of Public Improvements, consistent with Exhibit 11 attached hereto, and the source of the funding used for each category of Public Improvements. The Construction Contractor and the City Engineer shall agree upon the general format of the foregoing documentation so that the City can understand and monitor the funding of the construction of the Public Improvements. Such records shall include, but not be limited to, all contracts with general contractors and all subcontractors, contractors' sworn affidavits, lien waivers, title company ledgers and any other documentation specified by the City and/or in the possession of the Developer and/or the Construction Contractor. Such records shall be made available to the extent that they exist within ten (10) calendar days of the execution of this Agreement. Thereafter, such records shall be provided and updated at the monthly progress meetings.

7.10.5.1 The City may require an audit of all documentation or other evidence of the cost of Public Improvements, such audit to be performed by an auditor selected by the City in its sole discretion and at the City's cost within five (5) calendar days of a written request directed to the Developer by the City therefore.

7.10.5.2 Prior to conveyance of each component of the Public Improvements in accordance with the Water Street Agreements, the Developer shall provide, in a form agreed upon by the City Engineer, copies of all as-built drawings, shop drawings, operation and maintenance manuals for all equipment, appurtenances and materials.

7.10.5.3 The Developer shall require the Construction Contractor and any other contractors, subcontractors, and consultants and sub-

consultants to maintain for a minimum of three (3) years after the conveyance of the Public Improvements to the City adequate books, records and supporting documents to verify the costs of the Public Improvements, and shall require that such provisions shall survive the completion, expiration or termination of such agreements and contracts.

Section 7.11 Developer Funding of Construction Payment Escrow Account for Public Improvements. The Developer shall timely deposit sufficient funds into the Construction Payment Escrow Account to pay the Developer Payment Percentage of any Public Improvements as listed on Exhibit 10 attached hereto, pursuant to the Construction Payment Escrow Agreement.

Section 7.12 Change Orders. Only the City Engineer may authorize Change Orders for Public Improvements. Each such Change Order must be detailed in writing and signed by the City Engineer prior to any action with respect to such Change Order taking place. Change Orders in excess of the Owner Contingency shall require approval by the City Council prior to authorization by the City Engineer.

Section 7.13 Scope Change Request (SCR). Any SCR may only be approved by the City Engineer in writing. Any SCR shall describe the nature of the scope change and the reason for it.

Section 7.14 Prompt Payment Act. The provisions set forth herein supersede and replace all provisions of the Illinois Local Government Prompt Payment Act.

Section 7.15 Retainage. Retainage on the City's payment for the cost of Public Improvements ("Retainage") shall be allowed in accordance with this Section 7.15, except that: (a) Retainage will only be held for the Cost of the Work performed; and (b) Retainage will not be withheld for the Construction Manager's Fee or other direct expenses as detailed on Exhibit 11 attached hereto.

7.15.1 Retainage on Parking Deck Improvements: There shall be deducted from each City payment for Parking Deck Improvements as provided herein Retainage equal to the following: (a) for the first fifty percent (50%) of the completed work, a sum of ten percent (10%) of the amount requested to be disbursed, to be retained until after the completion of the entire work to the satisfaction of the City Engineer; and (b) after fifty percent (50%) or more of the work is completed, the City Engineer may, at his discretion, certify the remaining partial payments without any further retention, provided that satisfactory progress is being made, and provided that the amount of the applicable Retainage is not less than five percent (5%) of the total cost of the Parking Deck Improvements. The City Engineer, may at his sole discretion, allow less than five percent (5%) Retainage for the Parking Deck Improvements.

7.15.2 Riverwalk Improvements. There shall be deducted from each City payment for Riverwalk Improvements as provided herein Retainage equal to the following: (a) for the first fifty percent (50%) of the completed work, a sum of ten percent (10%) of the amount requested to be disbursed, to be retained until after the

completion of the entire work to the satisfaction of the City Engineer; and (b) after fifty percent (50%) or more of the work is completed, the City Engineer may, at his discretion, certify the remaining partial payments without any further retention, provided that satisfactory progress is being made, and provided that the amount of the applicable Retainage is not less than five percent (5%) of the total cost of the Riverwalk Improvements. The City Engineer, may, at his sole discretion, allow less than five percent (5%) Retainage for the Riverwalk Improvements.

7.15.3 Other Public Improvements. There shall be deducted from each City payment for Other Public Improvements as provided herein Retainage equal to the following: (a) for the first fifty percent (50%) of the completed work, a sum of ten percent (10%) of the amount requested to be disbursed, to be retained until after the completion of the entire work to the satisfaction of the City Engineer; and (b) after fifty percent (50%) or more of the work is completed, the City Engineer may, at his discretion, certify the remaining partial payments without any further retention, provided that satisfactory progress is being made, and provided that the amount of the applicable Retainage is not less than five percent (5%) of the total cost of the Other Public Improvements. The City Engineer, may, at his sole discretion, allow less than five percent (5%) Retainage for the Other Public Improvements.

7.15.4 Parking Deck - Payment of Retainage/Final Payment. Retainage held by the City for the Parking Deck Improvements shall be paid at closing on the Parking Deck Property under the Purchase and Sale Agreement, except that the City may continue to hold an amount (the “**Parking Deck Holdback**”) equal to the greater of: (a) 1% of the Cost of Work of the Parking Deck Improvements or (b) 200% of the value of the punch-list items for the Parking Deck Improvements, as determined by the City Engineer. Final payment of the Parking Deck Holdback will be made within thirty (30) days of final completion of the Parking Deck Improvements including all punch-list items.

7.15.5 Riverwalk Improvements - Payment of Retainage/Final Payment. Retainage held by the City for the Riverwalk Improvements shall be paid at closing on the Riverwalk Property under the Purchase and Sale Agreement, except that the City may continue to hold an amount (the “**Riverwalk Holdback**”) equal to the greater of: (a) 1% of the Cost of Work of the Riverwalk Improvements or (b) 200% of the value of the punch-list items for the Riverwalk Improvements, as determined by the City Engineer. Final payment of the Riverwalk Holdback will be made within thirty (30) days of final completion of the Riverwalk Improvements including all punch-list items.

7.15.6 Other Public Improvements - Payment of Retainage/Final Payment. Retainage held by the City for the Other Public Improvements shall be paid upon Substantial Completion of said Other Public Improvements, except that the City may continue to hold an amount (the “**Other Improvements Holdback**”) equal to the greater of: (a) 1% of the Cost of Work of the Other Public Improvements or (b) 200% of the value of the punch-list items for the Other Public Improvements, as determined by the City Engineer. Final payment of the Other Improvements Holdback will be made within thirty (30) days of final completion of the Other Public Improvements including all punch-list items. The Other Public Improvements shall be deemed to be accepted by the

City at the time a Bill of Sale therefore is executed by the Developer and accepted by the City.

Section 7.16 Payment upon Issuance of a Public Improvements Direction. In the event that the City issues a Public Improvements Recording Direction as provided herein after completion of any portion of the Public Improvements, amounts due to the Developer and/or the Construction Contractor for said portion of the Public Improvements shall constitute final payment for such services, and no further payment shall be due from the City unless the City assumes the Construction Contract for Public Improvements. In the event a Public Improvement is partially completed at the time of the issuance of a Public Improvements Recording Direction, the Developer or the Construction Contractor shall be paid for services rendered on the basis of the proportion of work completed and accepted for each Public Improvement completed to date. No payment pursuant to this provision shall be made unless and until the Developer, the Construction Contractor, other contractors and all subcontractors, consultants, sub-consultants, vendors, and sub-vendors have provided all items and documents required pursuant to this Article 7 and any other documentation reasonably requested by the City Engineer.

Section 7.17 Waivers of Lien.

7.17.1 The Developer shall require the Construction Contractor to submit partial waivers of lien with each Payment Request submitted to the City for any products or services directly attributable to the Public Improvements for the period covered by that Payment Request. Additionally, concurrently with the delivery of any Payment Request, the Developer shall cause the Construction Contractor to submit an affidavit listing all subcontractor(s), sub-consultant(s), and sub-vendor(s) that have performed any portion of the Public Improvements for which payment is sought under the applicable Payment Request and stating that all obligations incurred in performance of said Public Improvements have been paid in full.

7.17.2 The Construction Payment Escrow Agreement shall provide that once funds are deposited into the Construction Payment Escrow Account, such funds shall be released by the Title Company to any subcontractor only upon receipt of a partial lien waiver from such subcontractor (or a final lien waiver, if the payment being made is the final payment due to the sub-contractor).

7.17.3 Within thirty (30) days after the deposit of the City funds into the Construction Payment Escrow Account in response to the submission and approval of a Payment Request, the Developer shall, or shall cause the Construction Contractor to, submit copies of all waivers of lien from every subcontractor(s), sub-consultant(s), and sub-vendor(s) which were paid in connection with the subject Payment Request.

**ARTICLE 8
SURETIES REQUIRED/WARRANTIES**

Section 8.1 Performance and Payment Bond for Parking Deck Property and Riverwalk Property. Prior to commencement of construction of any work on any Public Improvements, and at all times prior to completion and conveyance of the Public Improvements

to the City, the Developer procure and maintain, or shall contractually require its Construction Contractor to procure and maintain, a performance and payment bond for construction of the Parking Deck Improvements, Riverwalk Improvements, and the City's Payment Percentage of the cost of all Other Public Improvements, in a form and amount approved by the City by sureties having at least a AA rating by A.M. Best Company, Inc. Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency. In order to be valid hereunder, the City must be named as the as the obligee or co-obligee on the Performance Bond from a source and in a form and amount approved by the City. Except for the AA rating referenced above, said bonds shall comply at a minimum with the provisions of the Public Construction Bond Act, 30 ILCS 550/0.01, *et seq.*

Section 8.2 Letter of Credit. The Developer shall provide the City with one or more letters of credit for the Developer Payment Percentage of the cost of all Other Public Improvements in a form, amount, and from a provider approved by the City (such approval not to be unreasonably withheld). The Mortgage Lender is deemed approved by the City as the issuer of the letters of credit. In order to be valid hereunder, the City must be named as the as the beneficiary on said letter of credit(s). As the Other Public Improvements are completed by the Developer and approved by the City Engineer, the Developer and the City shall cooperate with each other to cause a reduction in the amount of the letter of credit required hereunder such that the Developer shall only be required to maintain a letter of credit in an amount equal to the Developer's share of the cost of the Other Public Improvements that have not yet been completed and approved by the City Engineer; provided, however, that, until such time as the Other Public Improvements are accepted by the City, in no event shall the letter of credit be reduced below an amount equal to ten percent (10%) of the line items for the Other Public Improvements as set forth on Exhibit 10 attached hereto.

Section 8.3 Maintenance Surety for Other Public Improvements. Upon acceptance by the City of a Bill of Sale for the Other Public Improvements, the Developer shall provide the City with a maintenance surety for the Other Public Improvements in an amount and form approved by the City and in accord with Title 7 of the Naperville Municipal Code.

Section 8.4 Duplicate Originals. The City Attorney shall be provided with copies of each performance bond, payment bond or letter of credit issued pursuant to Section 8.1 or 8.2 hereof, within ten (10) days of their issuance.

Section 8.5 Underlying Obligations Remain Despite Sureties. The Developer shall not be relieved of its obligations hereunder, under the other Water Street Agreements, under the Zoning/Entitlement Ordinances, or pursuant to any applicable Laws, by virtue of obtaining and maintaining performance bonds, payment bonds, letters of credit or completion sureties as provided herein.

Section 8.6 Confirmation. At the request of the City, the Developer, or the Construction Contractor, shall provide documentation evidencing that all performance bonds, payment bonds, and letters of credit described herein remain in full force and effect.

Section 8.7 Warranties. The Developer shall contractually require that each and every warranty provided by the Construction Contractor, and every subcontractor, shall run to

the benefit of the City, in addition to the Developer, insofar as said warranty pertains to any of the Public Improvements. Prior to final payment by the City, the Developer shall deliver to the City all warranties provided and shall provide written confirmation from the Construction Contractor that the warranties provided constitute all warranties applicable to the Public Improvements.

ARTICLE 9
CITY’S RIGHTS IN PARKING DECK PROPERTY AND RIVERWALK PROPERTY
SUPERIOR/NO SUBORDINATION

Section 9.1 Priority of Recording. The Riverwalk Easement Agreements, this Agreement, the Purchase and Sale Agreement, the Rebate Agreement and the Public Improvements Escrow Agreement (the “**Priority Documents**”), shall be recorded against the Water Street Project Property with the DuPage County Recorder prior to the Permitted Mortgage being recorded or otherwise attaching to Parking Deck Property or the Riverwalk Property. In the event that the Priority Documents are not recorded prior to the Permitted Mortgage, the Water Street Agreements shall be subject to termination at the City’s sole discretion (unless the recording order is corrected by the Developer within 30 days). The Existing Lien will be released from title at closing on the Developer’s Mortgage Loan and replaced at the same closing with the Permitted Mortgage. The City shall at no time subordinate its interests in the Parking Deck Property or the Riverwalk Property, including but not limited to the Public Improvements thereon, or in the Other Public Improvements, to any person or entity unless approved by formal action of the City Council.

Section 9.2 Developer’s Lenders. The Developer represents that (as of the Effective Date) it has two sources of debt financing for the Developer Components, namely the Mortgage Lender and the Mezzanine Lender. The Developer shall not obtain any financing for the Developer Components that would result in the creation of an Unpermitted Encumbrance.

Section 9.3 Strict Limitation on Encumbrances. Except for (a) the Existing Lien (to be released at the Closing on the Mortgage Loan); (b) the Permitted Mortgage; and (c) mechanic’s liens which are provided for in Section 9.4 hereof, the Developer shall at no time permit any mortgage or other financing instrument of any kind or nature to attach to or affect: (i) the Parking Deck Land; (ii) the Riverwalk Land; (iii) the Parking Deck Improvements; (iv) the Riverwalk Improvements; (v) any other property owned by the City; or (vi) any Other Public Improvements to be constructed as part of the Water Street Project as provided herein and in the other Water Street Agreements (any such impermissible encumbrance is hereinafter referred to as an “**Unpermitted Encumbrance**”). Any such Unpermitted Encumbrance shall not be valid as to the property described in clauses (i) through (vi) of this Section 9.3 unless the City has first specifically approved such Unpermitted Encumbrance in writing. For purposes of clarity, it is acknowledged that no Future Mortgage may be granted by the Developer or any Separate Lot Owner on any of the foregoing (i) through (vi) unless the City has first specifically approved such Future Mortgage in writing. Except as set forth in Section 9.3.4 and Section 9.4 of this Agreement, this Section 9.3 shall terminate upon the conveyance of the Parking Deck Property and the Riverwalk Property to the City in accordance with the Water Street Agreements.

Section 9.3.1 City's Rights Superior. The Parties hereby stipulate that the City's rights and interests in the land and improvements described in clauses (i) through (vi) of Section 9.3 hereof are and shall be superior to any mortgage, lien, or other encumbrance of any kind or nature affecting the same, and that the Developer has not and will not enter into, obtain, or permit any agreement, mortgage, loan, or any other lien or encumbrance of any kind with any Lender or any other person or entity that provides otherwise.

Section 9.3.2 Existing Lien. The Parties acknowledge that the Existing Lien is currently recorded against the Water Street Project Property which lien shall be released in its entirety, immediately prior to recording the Permitted Mortgage. Upon recording of the release of the Existing Lien, the Developer shall promptly transmit to the City Attorney an executed copy of the release showing the date and recording number of record. If, at the time of closing on the Mortgage Loan, there are encumbrances other than the Existing Lien which affect the Parking Deck Land or the Riverwalk Land which are not "Permitted Exceptions" as defined in the Purchase and Sale Agreement, the City shall not be obligated to pay the first half of the purchase price for the Parking Deck Land or to fund any Public Improvements.

Section 9.3.3 Permitted Mortgage. The Parties further acknowledge that the Permitted Mortgage secures a loan in the original principal amount of Forty-Eight Million Dollars (\$48,000,000) and such will be recorded against the Developer Components (including the Parking Deck Property and the Riverwalk Property) by the Mortgage Lender at the time the Developer closes on its Mortgage Loan for the Developer Components. The Permitted Mortgage will also secure a letter of credit facility from the Mortgage Lender estimated to be Five Million Dollars (\$5,000,000) which will be used to issue the letters of credit referred to in Section 8.2 hereof, which letters of credit shall reduce in accordance with Section 8.2 hereof. There shall be one Permitted Mortgage securing both facilities which shall (as it relates to the Public Improvements) be subject to the mortgage release requirements of the Public Improvements Escrow Agreement and the Purchase and Sale Agreement.

Section 9.3.3.1 Modification of Permitted Mortgage. In the event that the Permitted Mortgage is modified, the City Engineer and the City Attorney shall be provided with a copy of such modified mortgage within seven (7) business days of its execution. The Release deposited by the Mortgage Lender with the Escrow Agent for the Public Improvements Escrow Agreement shall continue to be in effect as to any modification(s) made to the Permitted Mortgage.

Section 9.3.3.2 Release of Permitted Mortgage. The Permitted Mortgage shall be fully and completely released as to the Parking Deck Land, the Riverwalk Land, the Parking Deck Improvements and the Riverwalk Improvements: (a) at the time the same are conveyed to the City either at closing on the Parking Deck Property and/or the Riverwalk Property, or (b) pursuant to a Public Improvements Recording Direction in the event of an Uncured Default (or prior to the expiration of a Lender Cure Period as provided in Section 18.6.6). A Release, in a form approved by the City Attorney, shall be deposited by the

Mortgage Lender into the Public Improvements Escrow Agreement account at the time of execution of said Public Improvements Escrow Agreement.

Section 9.3.3.3 Unity of Permitted Mortgage. Mortgage Lender agrees that the documents comprising the Mortgage Property shall at all times be held in the name of the same Person.

Section 9.3.4 Penalties for Unpermitted Encumbrance. Any Unpermitted Encumbrance shall constitute a material breach of this Agreement and the City shall have the right, at its sole discretion, to declare an Event of Default if an Unpermitted Encumbrance exists. If an Event of Default caused by an Unpermitted Encumbrance is not cured within any applicable Cure Period, regardless of what state of construction the Public Improvements may be in, the City may, at its sole discretion, terminate the Rebate Agreement, and/or elect any other remedy provided for herein, and/or take any action permitted at law or in equity as it determines appropriate. Further, the Developer shall be obligated to pay the City \$5,000.00 a day for each day that such Unpermitted Encumbrance exists until a Cure is effected (which \$5,000.00 per day shall not begin to accrue until ninety (90) days from the date on which the Unpermitted Encumbrance came into existence). The City shall not be required to provide notice to the Developer of such Unpermitted Encumbrance. In the event that such penalty amounts are not paid within thirty (30) days of issuance of a notice of penalty (or multiple notices if additional penalties accrue) to the Developer given in accordance with the notice provisions contained in Article 12 hereof, the City may utilize any remedy provided for herein and/or may take any other action permitted at law or in equity as the City determines appropriate to obtain payment of such penalties and to clear title to the Parking Property and/or the Riverwalk Property. Any reasonable attorneys' fees and costs (in-house or outside) associated with clearing title as aforesaid shall be reimbursed to the City by the Developer within thirty (30) days of issuance of an invoice therefor to the Developer pursuant to the notice provisions contained in Article 12 hereof. The provisions of this Section 9.3.4 shall survive the conveyance of the Parking Deck Property and the Riverwalk Property to the City if such conveyance is effectuated pursuant to a Public Improvements Recording Direction.

Section 9.3.5 Replacement Mortgage Loan. In the event the Developer is required to (or desires to) refinance the Mortgage Loan with a new construction loan prior to the conveyance of the Public Improvements to the City, the Developer shall notify the City of its intent to refinance the Mortgage Loan in writing at least thirty (30) days prior to refinancing the Mortgage Loan. Upon so notifying the City, the Developer may refinance the Mortgage Loan with a new construction loan (the "**Replacement Mortgage Loan**") with a new construction lender (a "**Replacement Mortgage Lender**") provided that: (a) the Replacement Mortgage Lender is a financial institution having assets of at least \$1,000,000,000 and is an experienced commercial construction lender; (b) the Replacement Mortgage Loan shall be secured only by liens that qualify as a Permitted Mortgage hereunder and not by any Unpermitted Encumbrance; (c) the Replacement Mortgage Lender delivers to the City an executed Lender Acknowledgment substantially in the form delivered by the Mortgage Lender as of the Effective Date; and (d) the Replacement Mortgage Lender: (i) enters into a joinder to the Public

Improvements Escrow Agreement such that it will become a party to and bound by the terms thereof; and (ii) deposits a replacement Release in a form approved by the City Attorney, which approval shall not be unreasonably withheld, with the Title Company to be held pursuant to the Public Improvements Escrow Agreement which will release the Permitted Mortgage held by the Replacement Mortgage Lender. In no event shall a Replacement Mortgage Lender obtain any rights or interests different from or greater than the rights of the Mortgage Lender set forth in the Water Street Agreements. Further, any Replacement Mortgage Lender shall be bound by all of the terms and conditions of the Water Street Agreements as such relate to the Mortgage Lender. This Section 9.3.5 shall not apply to: (x) any Future Mortgage granted by the Developer or any Separate Lot Owner pursuant to Section 11.8 hereof; or (y) any Transfer of the Mortgage Loan by the Mortgage Lender made in compliance with Section 11.9(3) hereof.

Section 9.3.6 Replacement Mezzanine Loan. In the event the Developer is required to (or desires to) replace the Mezzanine Loan with a new mezzanine loan prior to the conveyance of the Public Improvements to the City, the Developer shall notify the City of its intent to refinance the Mezzanine Loan in writing at least thirty (30) days prior to refinancing the Mezzanine Loan. Upon so notifying the City, the Developer may replace the Mezzanine Loan with a new mezzanine loan (the “**Replacement Mezzanine Loan**”) with a new mezzanine lender (a “**Replacement Mezzanine Lender**”) provided that: (a) the Replacement Mezzanine Lender is a financial institution or institutional lender having assets of at least \$500,000,000 (in name or under management) and is an experienced commercial mezzanine lender; (b) the Replacement Mezzanine Loan shall not be secured by any Unpermitted Encumbrance; and (c) the Replacement Mezzanine Lender delivers to the City an executed Lender Acknowledgment substantially in the form delivered by the Mezzanine Lender as of the Effective Date. In no event shall a Replacement Mezzanine Lender obtain any rights or interests different from or greater than the rights of the Mezzanine Lender set forth in the Water Street Agreements. Further, any Replacement Mezzanine Lender shall be bound by all of the terms and conditions of the Water Street Agreements as such relate to the Mezzanine Lender. This Section 9.3.6 shall not apply to any Transfer of the Mezzanine Loan by the Mezzanine Lender made in compliance with Section 11.9(6) hereof.

Section 9.4 Mechanic’s Liens. The Developer and the City hereby covenant and agree that they will make timely payments so as not to create cause for the recording of any mechanic’s lien against the Parking Deck Land, the Riverwalk Land, or any Public Improvements. In the event any such mechanic’s lien or claim for mechanic’s lien is recorded, the Developer shall diligently pursue the release or discharge of such lien by all reasonable means, including litigation (if necessary). No Event of Default shall occur if within thirty (30) days of the date of filing of said mechanic’s lien claim, the Developer or the Construction Contractor causes such mechanic’s lien to be released or bonded over. No mechanics lien shall delay the conveyance of the Parking Deck Property or the Riverwalk Property to the City. At the time of conveyance the Developer will establish a title indemnity with Title Company so as to obtain for the City title insurance over any unreleased lien claim. The provisions of this Section 9.4 shall survive the conveyance of the Parking Deck Property and the Riverwalk Property to the City if such conveyance is effectuated pursuant to a Public Improvements Recording Direction.

ARTICLE 10 HOTEL FLAG

Section 10.1 City Approval of Hotel Flag. The City has approved the Hotel Indigo as the Hotel Flag for the Hotel Facility component of the Water Street Project. The Developer must submit to the City a fully executed agreement for the operation of the Hotel Facility by the Hotel Indigo prior to issuance of an occupancy permit for any part of the Hotel Facility. In the event that the Developer wishes to have the Hotel Facility operated by a Hotel Flag other than the Hotel Indigo, the provisions of this Article shall apply.

Section 10.2 Change of Hotel Flag. If the Developer wishes to change the Hotel Flag, the Developer may do so without the City's consent so long as the Hotel Flag is, at the time of such change, rated in the category of "Upscale Chain" or higher rating by Smith Travel Research ("STR") and so long as the Developer provides the City with prior written notice of the proposed Transfer not less than thirty (30) days prior to such Transfer in conformity with the provisions of Article 12 hereof. In the event that Smith Travel Research adopts a different rating scale than the rating scale which is in effect as of the Effective Date of this Agreement, or otherwise ceases to provide hotel ratings for any reason, the City and the Developer shall agree upon an alternate means of ranking which shall thereafter apply for provisions of this Agreement.

Section 10.3 Approval Required for Change of Flag to a Lower STR Rating. For so long as the Water Street TIF District or the Rebate Agreement remains in effect, any change in the identity of the Hotel Flag to a Hotel Flag that is below the "Upscale Chain" rating by STR will require the City's prior written approval (such approval not to be unreasonably withheld and the City shall not impose unreasonable conditions with respect thereto).

Section 10.4 Parking Facility License Agreement to Operate in Tandem. Except as otherwise set forth in the Parking Facility License Agreement, unless otherwise approved by the City Council, the rights and obligations under the Parking Facility License Agreement shall at all times be exercised and performed by the Hotel Operator which is operating the Hotel Facility with a Hotel Flag in accordance with this Article 10. The provisions regarding transfer of the Parking Facility License Agreement as contained in the Parking Facility License Agreement shall control over the provisions of this Agreement as far as the assignment of the Parking Facility License Agreement is concerned.

Section 10.5 Continued Operation of the Hotel Facility. At all times during the term of this Agreement, the Hotel Operator shall continue to operate and maintain the Hotel Facility and to hold the Parking Facility License Agreement. Notwithstanding the foregoing, the City acknowledges that the Hotel Operator may engage the services of a Hotel Manager (as such term is defined in the Parking Facility License Agreement).

Section 10.5.1 Temporary Cessation. Notwithstanding anything to the contrary contained herein, it shall not be an Event of Default hereunder if the Hotel Operator ceases continuous operation of the Hotel Facility: (i) on account of a casualty or condemnation; or (ii) for any other reason so long as such cessation is for a period of ninety (90) days or less.

**ARTICLE 11
TRANSFERS AND ASSIGNMENTS**

Section 11.1 City Consent to Transfer Prior to Fifth Anniversary of the Rebate Commencement Date. Except as set forth in Section 11.11.2 hereof, prior to the fifth anniversary of the Rebate Commencement Date as defined in the Rebate Agreement, the Developer shall not Transfer its interest in the Water Street Project Property or the Water Street Agreements, or any portion thereof, or any interest therein, without consent of the City thereto, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 11.1.1 Notice of Proposed Transfer. If the Developer wishes to Transfer an interest in the Water Street Project Property as described in Section 11.1 or 11.4, it shall provide the City with a request for approval of such Transfer (a “**Notice of Proposed Transfer**”). Any Notice of Proposed Transfer shall identify the name, address, and telephone number of the proposed Transferee, as well as the state in which the Transferee is organized.

Section 11.1.2 Information Regarding Transferee. Concurrently with the giving of the Notice of Proposed Transfer and in support of the Developer's request for approval of a conveyance or Transfer as provided herein, the Developer shall provide the City with documentation to demonstrate that the proposed Transferee meets the standards of creditworthiness and financial strength set forth in 65 ILCS 5/8-11-20(6) (hereinafter “**Documentation of Creditworthiness**”). In addition to the Documentation of Creditworthiness, the Developer acknowledges that, in connection with any such Transfer under this Section 11.1, the City may reasonably request additional information regarding the Transferee that the City reasonably believes is necessary in order to determine if the Transferee has the experience and financial ability required to perform the obligations of the Developer under the Water Street Agreements (“**Additional Transferee Information**”).

Section 11.2 Submission and Approval Process. Upon delivery of a Notice of Proposed Transfer, the approval or rejection of the Transferee shall proceed on the following basis (this process being referred to as the “**Submission and Approval Process**”):

Section 11.2.1 City Receipt Notice. Within ten (10) business days of receipt of the Notice of Proposed Transfer and the Documentation of Creditworthiness for the Transferee, the City Manager will give notice to the Developer of the City’s receipt of the Notice of Proposed Transfer (the “**City Receipt Notice**”) which City Receipt Notice shall also specify:

- (i) either the City’s (A) approval of the Documentation of Creditworthiness (such approval not to be unreasonably withheld); or (B) what additional Documentation of Creditworthiness is required from the Transferee; and
- (ii) in the case of a Transfer pursuant to Section 11.1 (but not in the case of a Transfer under Section 11.4), either (A) confirmation that

no Additional Transferee Information is required; or (B) a specific list of what Additional Transferee Information is required.

Section 11.2.2 City Determination. If the City Receipt Notice approves the Documentation of Creditworthiness and does not request Additional Transferee Information, then within ten (10) business days of giving the City Receipt Notice, the City Manager shall give the Developer written notice which shall either give consent or deny consent to the Transfer in accordance with this Article 11 (a “**City Determination**”). If the City Receipt Notice requests additional Documentation of Creditworthiness or Additional Transferee Information, then within ten (10) business days after the Developer provides the last of the requested additional Documentation of Creditworthiness or Additional Transferee Information, the City shall issue its City Determination.

Section 11.2.3 Deemed Approval. If the City fails to deliver: (i) a City Receipt Notice within the time period provided in Section 11.2.1 hereof; or (ii) a City Determination within the time period provided in Section 11.2.2 hereof, then the City’s approval shall be deemed to have been given to the Transfer and the Transferee described in the Notice of Proposed Transfer. The City Manager and Developer may mutually agree to an extension of the timeframes provided for in this Section 11.2.

Section 11.2.4 Outstanding Amounts Due to City. In the event that there are any overdue payments owed to the City under the Water Street Agreements relating to the portion of the Water Street Project Property that is the subject of the proposed Transfer, the City may require that all such payments be paid first as a condition to issuing a City Determination approving the proposed Transfer; provided, however, the failure to require such payments shall not be deemed a waiver or release by the City of the obligation to make such payments and the City reserves its rights to pursue collection of any such outstanding payments.

Section 11.3 Assumption of Obligations. Subject to the provisions of Section 11.1 hereof, the Developer shall contractually require any proposed Transferee to record an assumption agreement in the form attached hereto as Exhibit 9 (hereinafter “**Assumption of Obligations**”) or in such other form as approved by the City Attorney. Prior to recordation, if the applicable Transfer is occurring at a time when the Water Street TIF District and/or the Rebate Agreement remain in effect, the City Manager shall be required to countersign the applicable Assumption of Obligations in order for such Assumption of Obligations to be effective. Notwithstanding the foregoing, the City Manager shall only be obligated to execute the Assumption of Obligations if the Developer and Transferee have (in fact) satisfied the conditions to Transfer set forth in this Article 11. No Transfer shall be deemed to be valid unless an Assumption of Obligations in the form of Exhibit 9 attached hereto, or as otherwise approved by the City Attorney, is executed by the Developer, the Transferee and (if required) the City Manager and recorded with the DuPage County Recorder. After recordation of the Assumption of Obligations, a copy of the recorded Assumption of Obligations shall be provided to the City.

Section 11.4 Transfer after the Fifth Anniversary of the Rebate Commencement Date. After the fifth anniversary of the Rebate Commencement Date as defined in the Rebate

Agreement, the Developer shall not Transfer its interest in the Water Street Project Property or the Water Street Agreements, or any portion thereof, unless the Developer has first provided the City with Documentation of Creditworthiness for the Transferee. Prior to any such conveyance, the Developer shall provide the City with a Notice of Proposed Transfer which shall be accompanied by such Documentation of Creditworthiness for the Transferee. Within ten (10) business days of receipt of a Notice of Proposed Transfer and the Documentation of Creditworthiness for the proposed Transferee, the City will deliver to the Developer (in accordance with the notice provisions in Article 12 hereof) a City Receipt Notice, which City Receipt Notice shall also specify either the City's (A) approval of the Documentation of Creditworthiness (such approval not to be unreasonably withheld) or (B) what additional Documentation of Creditworthiness is required from the Transferee. For purposes of clarity, in response to a Notice of Proposed Transfer pursuant to this Section 11.4, the City shall not have the right to request Additional Transferee Information. If, within the time periods provided under this Section 11.4 (or any agreed upon extension thereof) the City fails to deliver a City Receipt Notice, the City's approval of the Documentation of Creditworthiness shall be deemed to have been given. In addition to the Documentation of Creditworthiness, the Developer shall obtain a fully executed Assumption of Obligations from the Transferee, record such Assumption of Obligations with the DuPage County Recorder against the Water Street Project Property, and thereafter provide a copy of the recorded Assumption of Obligations to the City pursuant to the notice provisions set forth in Article 12 hereof. The requirements of this Section 11.4 shall remain in effect as long as the Water Street TIF District and/or the Rebate Agreement remain in effect.

Section 11.5 Payment Pursuant to the Rebate Agreement to Single Entity. Pursuant to the terms of the Rebate Agreement, at no time shall the City be required to remit Rebate Payments pursuant to the terms of the Rebate Agreement to more than one entity.

Section 11.6 No Transfer of Certain Interests.

Section 11.6.1 Interests in the Parking Deck Property, the Riverwalk Property, or the Other Public Improvements. Notwithstanding any provision in this Agreement, other than the Permitted Mortgage and Transfers made in accordance with Section 11.9 hereof, there may be no Transfer by the Developer of any interest in the Parking Deck Property, the Riverwalk Property, or the Other Public Improvements, except that: (i) the Parking Facility License Agreement can be Transferred to any subsequent Hotel Facility Owner as provided in the Parking Facility License Agreement (and the rights of the Hotel Facility Owner under the Parking License Agreement may be encumbered by a Future Mortgage against the Hotel Facility); and (ii) any successor Hotel Facility Owner shall have the benefits of the Water Street CCRS and the Water Street Easement/Encroachment Agreements as permitted in said Water Street CCRS and Water Street Easement/Encroachment Agreements (and the rights of the Hotel Facility Owner under the Water Street CCRS and the Water Street Easement/Encroachment Agreements may be encumbered by a Future Mortgage against the Hotel Facility).

Section 11.6.2 Interests in the Rebate Agreement. Subject to the terms of Section 11.9 hereof, without formal action taken by the City Council consenting thereto, there shall be no Transfer by the Developer of the Rebate Agreement or any interest

therein; provided, however, the foregoing shall not apply to a Transfer that is: (a) to a Hotel Master Tenant as permitted under Section 9.1 of the Rebate Agreement; (b) to a successor Hotel Facility Owner; (c) to the Mortgage Lender in connection with the Mortgage Lender's enforcement of its rights under the Permitted Mortgage; or (d) to any Future Lender in connection with the Future Lender's enforcement of its rights under a Future Mortgage granted by the Hotel Facility Owner.

Section 11.7 Collateral Assignment. Notwithstanding any provision to the contrary contained herein: (a) the Developer will, pursuant to the Permitted Mortgage, assign its interest in the Water Street Agreements on a collateral basis to the Mortgage Lender (and such collateral assignment shall be permitted hereunder); and (b) the Developer or any Separate Lot Owner (as applicable) may collaterally assign any interest in the Water Street Agreements to any Future Lender pursuant to a Future Mortgage.

Section 11.8 Lease or Mortgage of Water Street Project Property. Neither any provision contained this Agreement, including, without limitation, this Article 11, nor any provision of any other Water Street Agreement, shall prevent the leasing or mortgaging of any Private Improvements of the Water Street Project Property or any land other than the Parking Deck Land and the Riverwalk Land. The Developer and any Separate Lot Owner may freely grant a Future Mortgage with respect to any Private Improvements of the Water Street Project Property or any land comprising the Water Street Project Property (other than the Parking Deck Land, the Riverwalk Land or any Other Public Improvements) without the prior consent of the City. All Future Mortgages shall, however, be subject to the terms of this Agreement (including, without limitation Section 11.9 hereof) and any other Water Street Agreements which encumber the land that the Future Mortgage is recorded against, to the extent that such Water Street Agreements survive the conveyance of the Parking Deck Property and the Riverwalk Property to the City.

Section 11.9 No Pre-Approval. Notwithstanding anything to the contrary in this Agreement or any of the other Water Street Agreements, the following shall not require any pre-approval of the City, and are permitted under this Agreement and the other Water Street Agreements:

- (1) a Transfer of the Developer Components and the Developer's rights and obligations under the Water Street Agreements to a Mortgage Transferee by way of or by virtue of a foreclosure sale or a deed-in-lieu of foreclosure (provided the Mortgage Transferee shall deliver the Assumption of Obligations concurrently with its acquisition of title to the Developer Components or any applicable portion thereof). In no such event shall such Mortgage Transferee have any personal liability for any matters described in this Agreement or any other Water Street Agreement, such liability being limited to its interest in the Developer Components.
- (2) the Transfer of the Developer Components and the Developer's rights and obligations under the Water Street Agreements by any Mortgage Transferee to a third party Transferee; provided, however, such third party Transferee shall: (A) deliver the Assumption of Obligations concurrently

with its acquisition of title to the Developer Components, and (B) meet the conditions, as reasonably determined by the City, of 65 ILCS 5/8-11-20(6) (as in effect on the date of this Agreement) in order to receive the benefits of the Rebate Agreement; otherwise such third party Transferee shall lose the benefits of the Rebate Agreement. In connection with clause (B) of this Section 11.9(2), the third party Transferee shall submit the Documentation of Creditworthiness and the Submission and Approval Process shall apply with respect to the City's review thereof.

- (3) a transfer by the Mortgage Lender of its interest in the Mortgage Loan and Permitted Mortgage to a Transferee provided that: (a) notice of any such transfer is promptly given to the City, such that the City is aware of the identity of the Mortgage Lender existing from time to time, (b) any such transfer shall be subject to the terms of the Water Street Agreements and such Transferee shall be subject to the terms thereof as a Mortgage Lender as if were the named Mortgage Lender set forth herein, and (c) the Transferee shall execute: (i) a joinder to the Public Improvements Escrow Agreement, pursuant to which it will become a party to and bound by the terms thereof, and (ii) a replacement Release for delivery to the Title Company to be held pursuant to the Public Improvements Escrow Agreement.
- (4) a Transfer of 100% of the membership interests in the Developer to the holder of the pledge thereof pursuant to the Mezzanine Loan held by the Mezzanine Lender regardless of whether such Transfer occurs by way of a forced sale of such interests or an assignment in lieu of such forced sale or otherwise.
- (5) the Transfer of the Developer Components and the Developer's rights and obligations under the Water Street Agreements by the Developer to a third party Transferee (but only when the Developer is owned and controlled by the Mezzanine Lender after a Transfer as described in the preceding Section 11.9(4)); provided, however, such third party Transferee shall: (A) deliver the Assumption of Obligations concurrently with its acquisition of title to the Developer Components, and (B) meet the conditions, as determined by the City, of 65 ILCS 5/8-11-20(6) in order to receive the benefits of the Rebate Agreement; otherwise such third party Transferee shall lose the benefits of the Rebate Agreement. In connection with clause (B) of this Section 11.9(5), the third party Transferee shall submit the Documentation of Creditworthiness and the Submission and Approval Process shall apply with respect to the City's review thereof.
- (6) a transfer by the Mezzanine Lender of its interest in the Mezzanine Loan to a transferee, provided that: (a) notice of any such transfer is promptly given to City, such that the City is aware of the identity of the Mezzanine Lender existing from time to time, and (b) any such transfer shall be subject to the terms of the Water Street Agreements and such transferee

shall be subject to the terms thereof as a Mezzanine Lender as if were the named Mezzanine Lender set forth herein.

- (7) a Transfer of any portion of the Water Street Project Property and the Water Street Agreements encumbered by a Future Mortgage to the Future Lender or a Future Lender Transferee by way of or by virtue of a foreclosure sale or a deed-in-lieu of foreclosure pursuant to such Future Mortgage (provided the Future Lender or Future Lender Transferee shall deliver the Assumption of Obligations concurrently with its acquisition of title to such portion of the Water Street Project Property). In no such event shall any such Future Lender or Future Lender Transferee have any personal liability for any matters described in this Agreement or any Water Street Agreement, such liability being limited to its interest in the Water Street Project Property.
- (8) a Transfer of any portion of the Water Street Project Property and the Water Street Agreements encumbered by a Future Mortgage by such Future Lender or any Future Lender Transferee to a third party Transferee; provided, however, (A) such third party Transferee shall deliver the Assumption of Obligations concurrently with its acquisition of title to such portion of the Water Street Project Property and, if such transfer involves a permitted transfer of the Rebate Agreement, (B) such third party Transferee meets the conditions, as reasonably determined by the City, of 65 ILCS 5/8-11-20(6) (as in effect on the date of this Agreement) in order to receive the benefits of the Rebate Agreement; otherwise such Transferee shall lose the benefits of the Rebate Agreement. In connection with clause (B) of this Section 11.9(8), the third party Transferee shall submit the Documentation of Creditworthiness and the Submission and Approval Process shall apply with respect to the City's review thereof.

Section 11.10 Developer Membership Transfer. If it is intended that all or any part of the membership units representing effective voting control of the Developer will be Transferred so as to result in a change in the present effective voting control of the Developer to any person or entity that is not affiliated with the Developer as of the Effective Date (a “**Change of Control Transfer**”), the Developer shall immediately give written notice of such intent to the City in accordance with Article 12 hereof. The City shall have the right to approve such Change in Control Transfer, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the City shall have no right to consent to any of the following transfers of any membership units (direct or indirect) in the Developer (even if such results in a Change of Control Transfer): (a) any transfer resulting from the death or incompetency of any natural person; and (b) any Transfer to the Mezzanine Lender which is permitted under Section 11.9 hereof.

Section 11.11 Transfer to or by Separate Lot Owners.

11.11.1 First Transfer of Theater Building Land. At any time after the Developer shall have conveyed the Riverwalk Property and the Parking Deck Property to

the City in accordance with the Water Street Agreements, the Developer may Transfer the Theater Building Land to a Separate Lot Owner in accordance with the provisions of this Article 11.

11.11.2 First Transfer of Office Building Land. Immediately after the execution and recordation of this Agreement, the Rebate Agreement, the Parking Facility License Agreement and the Purchase and Sale Agreement (and prior to the recordation of the Permitted Mortgage), the Developer shall convey the Office Building Land to the Office Building Lot Owner, provided that: (a) such Transfer is made to Office Building Lot Owner subject to the Water Street Agreements, as the same may be amended from time to time, to the extent that any such Water Street Agreements affect the Office Building Land; and (b) the Office Building Lot Owner executes an Assumption of Obligations with respect to the Office Building Land and such Assumption of Obligations is recorded against the Office Building Land. Further Transfers of the Office Building Land by the Office Building Lot Owner shall be subject to the terms of Section 11.11.3 hereof.

11.11.3 Subsequent Transfers. Each Separate Lot Owner may thereafter Transfer the Office Building Land or the Theater Building Land (as applicable) to a new Separate Lot Owner provided that: (a) such Transfer is made subject to the Water Street Agreements, as may be amended from time to time, to the extent that any such Water Street Agreements affect the Office Building Land or the Theater Building Land (as applicable); and (b) the new Separate Lot Owner executes an Assumption of Obligations with respect to the Office Building Land or the Theater Building Land (as applicable). Notwithstanding the foregoing, any Transfer(s) of the Theatre Building Land prior to the fifth anniversary of the Rebate Commencement Date shall be subject to the provisions of Section 11.1 and 11.2 hereof.

Section 11.12 Failure to Strictly Comply. In the event of any Transfer of the Water Street Project Property or any Water Street Agreements, or any part thereof, that is not effected in full compliance with the provisions of this Article 11, the City may declare an Event of Default pursuant to Article 18 hereof and, if such Event of Default becomes an Uncured Default the City may exercise any of its rights and remedies under Article 18 hereof. In any case of a Transfer that is not permitted pursuant to the terms of this Agreement, the Developer shall remain fully liable for all of its obligations under this Agreement and the other Water Street Agreements, but the Transferee shall not be relieved of its liability for all such obligations as a successor to those interests conveyed to it by the Developer.

ARTICLE 12 NOTICE PROVISIONS

Section 12.1 Notice. Except as otherwise specifically provided herein, all notices required pursuant to this Agreement shall be sent by any recognized overnight mail courier service including USPS or personally delivered as follows:

IF TO THE CITY: Legal Department/City Attorney
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

WITH COPIES TO: City Engineer
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

AND TO: Development Manager
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

AND TO: City Finance Director
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

IF TO THE DEVELOPER: Water Street Property Owner, LLC
401 S. Main Street
3rd floor
Naperville, IL 60540
Attn: Nicholas M. Ryan

WITH COPIES TO: Kathleen C. West, Esq.
Dommermuth, Cobine, West, Gensler,
Philipchuck, Corrigan and Bernhard, LTD.
111 East Jefferson Avenue
Naperville, Illinois 60540

AND TO: Fifth Third Bank
Commercial Real Estate
222 S. Riverside Plaza 33rd Floor
Chicago, IL 60606
Attn: Andrew Roberts

AND TO: DLA Piper LLP (US)
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601-1293
Attn: Brian K. Doyle, Esq.

AND TO: Medley Opportunity Fund II, L.P.
375 Park Avenue
Suite 3304
New York, NY 10152
Attn: Daniel Jacobs

AND TO: Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299
Attn: David J. Weinberger, Esq.

Section 12.2 Change of Name or Address/Presumption of Validity. The names or addresses set forth above may be changed if notice of such change is given in writing as provided above. Notice that is issued in conformity with this Article 12 is presumed to have been validly given. In the event a Separate Lot Owner becomes the owner of the Office Building Land or the Theater Land, then any notices that relate to the Office Building Land or the Theater Land shall additionally be served upon the Separate Lot Owner at the notice address specified in the Assumption of Obligations recorded at the time the Separate Lot Owner takes title to the Office Building Land or the Theater Land (as applicable).

Section 12.3 Notice to Separate Lot Owners and Future Lenders. The City shall not be required to give notice to any Separate Lot Owner or Future Lender, unless and until a written notice is delivered to the City: (a) by the Separate Lot Owner, informing the City of the conveyance of the Office Building Land or the Theater Building Land to such Separate Lot Owner pursuant to the terms hereof, and/or (b) by the Future Lender, informing the City of the granting of a Future Mortgage pursuant to the terms hereof. The notice from any Separate Lot Owner given pursuant to this Section 12.3 shall set forth whether such Separate Lot Owner has acquired the Office Building Land or the Theater Building Land and shall include the notice address for such Separate Lot Owner and shall be accompanied by a copy of the deed with respect to the Office Building Land and/or the Theater Building Land (as applicable). The notice from any Future Lender given pursuant to this Section 12.3 shall include the notice address for such Future Lender. Upon request from the City after the City's receipt of such a notice from a Future Lender, each Future Lender shall deliver copies of any Future Mortgage which is recorded against any portion of the Water Street Project Property. Unless and until notice is given to the City pursuant to this Section 12.3, the City shall have no obligation to provide any notice (including Notices of Default) to any Separate Lot Owner or Future Lender under the Water Street Agreements.

Section 12.4 Annual Verification. In January of each year that this Agreement is in effect, the Developer shall provide written confirmation to the City Attorney of the name, address, telephone number and email address of the Developer, the Mortgage Lender, the Mezzanine Lender, Hotel Operator (if different from the Developer), Hotel Master Tenant (if applicable) and any Separate Lot Owners or Future Lenders (if any, based on the then current records of the Developer).

**ARTICLE 13
PARKING FACILITY LICENSE AGREEMENT**

Section 13.1 Parking Facility License Agreement. Concurrently with the execution and recordation of this Agreement, the Parties shall execute and record the Parking Facility License Agreement regarding payment for and usage of the Reserved Parking Spaces.

**ARTICLE 14
PARKING OVERFLOW AGREEMENT**

Section 14.1 Parking Overflow Agreement. Prior to June 30, 2015, or such other date agreed to in writing by the City Manager and the Developer, the City and the Developer shall enter into a separate agreement to compensate the City for overflow parking by overnight guests and patrons of the Hotel Facility in parking spaces within the Parking Deck Improvements which are in excess of the Reserved Parking Spaces (the “**Parking Overflow Agreement**”). The Parking Overflow Agreement shall include, but not be limited to, the following terms: (a) the charge per parking space shall be \$5 per space per day for each parking space used by overnight guests and patrons of the Hotel Facility in excess of the Reserved Spaces, (b) the Developer shall require the Hotel Operator to direct overnight parking guests of the Hotel Facility to use the Parking Deck Improvements for parking. If any amounts are not paid when due pursuant to the Parking Overflow Agreement, the Rebate Payments may be used to offset any non-payment of such amounts in accordance with Section 20.1 hereof. Notwithstanding the preceding provisions of this Article 14, the Hotel Operator shall not be required to use only the Parking Deck Improvements for overnight parking and the Hotel Operator shall be permitted to provide overnight parking in non-City owned parking lots. The compensation described in this Section 14.1 shall only be required for those guests and overnight patrons of the Hotel Facility who park overnight in portions of the Parking Deck Improvements which are not the Reserved Parking Spaces.

**ARTICLE 15
INDEMNIFICATION/THIRD PARTY LIABILITY**

Section 15.1 Indemnification by the Developer. The Developer covenants and agrees to pay, at its expense, all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from or associated with the construction or development of the Developer Components, except if directly caused by any Separate Lot Owner or the City (or resulting from the City’s willful misconduct), and to defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify, and hold harmless the City and its officers, agents, employees, independent contractors, consultants and legal counsel, servants and employees (“**Indemnified Parties**”) from and against any claims or actions or damages arising out of the construction of the Developer Components, except if directly caused by any Separate Lot Owner or the City (or resulting from the City’s willful misconduct), including but not limited to any actions arising from the Developer’s failure to comply with applicable Laws, and as to any mechanics or other lien or encumbrance affecting the Parking Deck Property or the Riverwalk Property or Other Public Improvements, except if directly caused by any Separate Lot Owner or the City (or resulting from the City’s willful misconduct). Except to the extent arising out of the City’s willful misconduct, the Developer further covenants to defend, indemnify, and

hold the Indemnified Parties harmless from all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from any claims made against by the City by any Person (other than the Developer or any Lender to whom the Rebate Agreement has been properly pledged): (a) claiming to be due amounts under the Rebate Agreement or (b) alleging that damages have been suffered as a result of payments made or withheld under the Rebate Agreement, or termination of the Rebate Agreement by the City. In any such claim, complaint or action against any of the Indemnified Parties, the Developer shall, at its own expense, appear, defend and pay all charges of reasonable attorneys' fees and all reasonable costs and other reasonable expenses arising therefrom or incurred in connection therewith, and, if any judgment or award shall be rendered against any of the Indemnified Parties in any such action, the Developer shall at its own expense, promptly satisfy and discharge such judgment or award provided however, that the Developer may not at any time settle or compromise such proceedings without advance written notice to the City if the City is a party to such proceedings. If such settlement or compromise involves any admission of wrongdoing on the part of the City, or any liability imposed on the City, monetary or otherwise, then the Developer shall be required to obtain the City's written consent to such settlement or compromise in advance. Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them, or from providing additional legal counsel in addition to legal counsel provided pursuant to this Article 15.

15.1.1 Representation in the Event of Conflict. If the Illinois Rules of Professional Conduct prohibit the City and the Developer, and/or the Construction Contractor, from being represented by the same legal counsel, or if the positions of the City and the Developer and/or the Construction Contractor in such litigation will likely conflict with each other, then the City shall have the option of being represented by legal counsel of its choice. In the event that the City exercises such option, then the Developer shall reimburse the City from time to time on written demand and notice of the amount due from the City Manager for any and all reasonable, actual, out-of-pocket costs and expenses related thereto, including but not limited to court costs, reasonable attorneys' fees (for in-house or outside counsel engaged by the City), witness fees and/or other litigation expenses.

15.1.2 Flow-Down Requirement. The Developer shall require the Construction Contractor, and use reasonable business efforts to require all subcontractors (and their subcontractors), to waive any and all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever against the City which may result from Construction Contractor's or such subcontractor's work or materials for the Developer Components. Nothing in this Section 15.1.2 shall: (a) void or negate the City's obligations under the Construction Contract for Public Improvements should the City elect to take an assignment thereof in accordance with the Public Improvements Escrow Agreement; or (b) operate to waive or render unenforceable any lien rights which the Construction Contractor may have in and to the Parking Deck Property or the Riverwalk Property as a result of the Construction Contract for Public Improvements..

15.1.3 City Rights under Tort Immunity Act. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and its employees

and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

Section 15.2 Indemnification by Separate Lot Owner. Each Separate Lot Owner covenants and agrees to pay, at its expense, all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from or associated with the construction or development of the portion of the Water Street Project owned by such Separate Lot Owner (i.e. the Office Building Land or the Theater Building Land), except if directly caused by the Developer or the City (or resulting from the City’s willful misconduct), and to defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify, and hold harmless the City and its officers, agents, employees, independent contractors, consultants and legal counsel, servants and employees (“**Indemnified Parties**”) from and against any claims or actions or damages arising out of the construction of the Water Street Project owned by such Separate Lot Owner (i.e. the Office Building Land or the Theater Building Land), except if directly caused by the Developer or the City (or resulting from the City’s willful misconduct), including but not limited to any actions arising from Separate Lot Owner’s failure to comply with applicable Laws. In any such claim, complaint or action against any of the Indemnified Parties, the Separate Lot Owner shall, at its own expense, appear, defend and pay all charges of reasonable attorneys’ fees and all reasonable costs and other reasonable expenses arising therefrom or incurred in connection therewith, and, if any judgment or award shall be rendered against any of the Indemnified Parties in any such action, the Separate Lot Owner shall at its own expense, promptly satisfy and discharge such judgment or award provided however, that the Separate Lot Owner may not at any time settle or compromise such proceedings without advance written notice to the City if the City is a party to such proceedings. If such settlement or compromise involves any admission of wrongdoing on the part of the City, or any liability imposed on the City, monetary or otherwise, then the Separate Lot Owner shall be required to obtain the City’s written consent to such settlement or compromise in advance. Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them, or from providing additional legal counsel in addition to legal counsel provided pursuant to this Article 15.

15.2.1 Representation in the Event of Conflict. If the Illinois Rules of Professional Conduct prohibit the City and the Separate Lot Owner from being represented by the same legal counsel, or if the positions of the City and the Separate Lot Owner in such litigation will likely conflict with each other, then the City shall have the option of being represented by legal counsel of its choice. In the event that the City exercises such option, then the Separate Lot Owner shall reimburse the City from time to time on written demand and notice of the amount due from the City Manager for any and all reasonable, actual, out-of-pocket costs and expenses related thereto, including but not limited to court costs, reasonable attorneys’ fees (whether for in-house or outside counsel engaged by the City), witness fees and/or other litigation expenses.

15.2.2 City Rights under Tort Immunity Act. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and its employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

**ARTICLE 16
INSURANCE**

Section 16.1 Water Street Project Insurance. The Developer shall, at the Developer's expense, or shall require the Construction Contractor to, at the Construction Contractor's expense, procure and continuously maintain in effect throughout the time during which work and/or construction is performed related to the Public Improvements of the Developer Components the insurance set forth below against claims which may arise from or in connection with the performance of construction of the Public Improvements by the Developer, the Construction Contractor, and their respective agents, representatives, employees or subcontractors, including but not limited to site preparation, until such time as said Public Improvements are conveyed to the City. The Developer shall notify the City Engineer in writing within ten (10) days of the Effective Date of this Agreement as to whether the Developer and/or the Construction Contractor shall be procuring and maintaining the insurance required pursuant to the terms of this Article 16, and the Developer shall identify in such notice to the City Engineer the insurance being provided by each of the Developer and the Construction Contractor.

The limits of liability for the insurance required pursuant to this Section 16.1 shall provide coverage for not less than the following amounts, or greater where required by Law. If the Developer maintains higher limits than the minimums shown below, the City shall be entitled to coverage for higher limits maintained by the Developer.

A. Commercial General Liability:

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 and shall include Premise/Operations, Products/Completed Operations, Independent Contractors, Contractual and Personal Injury/Advertising Injury.

Limits:

General Aggregate	\$5,000,000.00
Products/Completed Operations	\$5,000,000.00
Each Occurrence	\$5,000,000.00
Personal Injury	\$5,000,000.00

B. Automobile Liability:

Coverage shall be at least as broad as Insurance Services Office Form CA 00 01 and shall include all Owned, Hired, and Non-owned vehicles.

Limits:

Combined Single Limit per Accident	\$5,000,000.00
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C. Workers' Compensation:

Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

D. Employers' Liability

Limits:

Each Accident	\$2,000,000.00
Each Employee Bodily Injury by Disease	\$2,000,000.00
Policy Limit Bodily Injury by Disease	\$2,000,000.00

E. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Such coverage shall **name the City as a loss payee** as its interest may appear. This policy may be obtained by the Construction Contractor.

F. The Developer understands that the acceptance of certificates of insurance, policies and any other documents by the City in no way releases the Developer from the requirements set forth herein.

G. At the City's request, the Developer shall furnish proof to the City that the insurance required hereunder has not lapsed at any time and that the insurance remains in full force and effect.

H. Other Insurance Provisions

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, and employees are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement to the Developer's insurance policy, or as a separate owner's policy.

2. For any claims related to the performance of the Developer's work, Developer's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors.

Section 16.2 Insurer Ratings. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise approved in writing by the City. Each insurance policy required by this Article 16 shall provide that coverage shall not be canceled, except with notice to the City.

ARTICLE 17
OPERATION OF THE WATER STREET PROJECT

Section 17.1 Authorized Developer Representative. The Authorized Developer Representative shall be the individual (designated by the Developer pursuant to Section 6.4 hereof) who the City may contact in the event that any questions or problems arise with respect to the Developer Components. The Authorized Developer Representative shall be reasonably available to the City and shall promptly respond to any questions or concerns raised by the City. The Developer shall update the name, address, telephone number, and email address of said Authorized Developer Representative and shall ensure that the contact information provided is correct at all times. The Developer may change the identity of the Authorized Developer Representative upon notice given to the City Manager in accordance with Article 12 hereof.

Section 17.2 Authorized City Representative. The Authorized City Representative shall continue to be the City Engineer or his designee (as provided in Section 6.5 hereof) who the Developer may contact in the event that any questions or problems arise with respect to the City's involvement with the Water Street Project. Said Authorized City Representative shall be reasonably available to the Developer and shall promptly respond to any questions or concerns raised by the Developer. The City Engineer shall update the name, address, telephone number, and email address of said Authorized City Representative and shall ensure that the contact information provided is correct at all times. The City may change the identity of the Authorized City Representative upon notice given to the Developer in accordance with Article 12 hereof.

Section 17.3 Parking and Traffic Management.

17.3.1 Prior to recording the Water Street Agreements, the Developer shall provide the City with a signed letter of intent to the effect that an off-site parking agreement will be entered into to provide a minimum of sixty-one (61) parking spaces to serve the Developer Components. Prior to the Rebate Commencement Date under the Rebate Agreement, the Developer shall have actually entered into a binding written agreement allowing the use of such spaces, such agreement to be reasonably approved by the City Engineer.

17.3.2 Upon issuance of an occupancy permit for any portion of the Developer Components, the Developer and the City (each through their appointed representatives dealing with the issues of traffic management) shall meet (at a minimum) monthly for the first year, bi-monthly for the second year, and quarterly thereafter, to evaluate upcoming traffic and parking issues based upon events occurring at the Developer Components and in the City in order to determine what, if any, steps will need to be taken in order to minimize traffic congestion and improve traffic flow, including but not limited to the Developer providing resources, as reasonably approved by the City Engineer, which are necessary to direct traffic, which may include traffic control personnel retained by the Developer and made available as needed. Notwithstanding the foregoing, the Developer shall only be required to provide traffic management resources necessitated by events occurring in the Developer Components.

ARTICLE 18 EVENTS OF DEFAULT

If any Event of Default shall occur, the City shall give a Notice of Default as provided herein and the Developer and each Lender (subject to Section 18.5 below) shall be entitled to the Cure Periods provided for in this Article 18 to Cure such Event of Default. In the event that an Event of Default is not Cured within the applicable Cure Periods, or if such Event of Default constitutes a default which may not be Cured, such Event of Default shall be an Uncured Default hereunder.

Section 18.1 Event of Default Due to Unpermitted Encumbrances. The Developer shall notify the City in the event that any Unpermitted Encumbrance shall arise with respect to the Developer Components (an “**Unpermitted Encumbrance Default**”). In the event that an Unpermitted Encumbrance arises with respect to the Developer Components, there shall be no Developer Cure Period, but the Lender Cure Period shall be as set forth in Section 18.5.2 hereof.

Section 18.2 Events of Default Relating to Completion. If any one or more of the Completion Related Defaults (as hereinafter defined) occurs, the Developer shall have an obligation to notify the City of the same in writing within seven (7) calendar days of obtaining knowledge of said Event of Default. If any such Event of Default is not: (x) Cured by the Developer within the Developer Cure Period specified below; (y) Cured by a Curing Lender in accordance with Section 18.5.2 hereof; or (z) waived in writing by the City Manager, the City may issue a Public Improvements Recording Direction pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement. Each Developer Cure Period shall commence on the second day following delivery of the applicable Notice of Default by the City in accordance with Article 12 hereof (not including the day said Notice of Default is either personally delivered or deposited for delivery by a nationally recognized overnight mail courier service). In each instance, a different Cure Period may be mutually agreed upon in writing by the Parties. Each of the following shall be an Event of Default (collectively the “**Completion Related Defaults**”):

- (a) **Failure to Comply with Plans and Specifications.** Failure to construct the Public Improvements in compliance with the Plans and Specifications for Public Improvements. No Uncured Default shall occur with respect to such failure, provided that within ninety (90) days of Notice of Default from the City the Developer causes such defect in construction to be corrected, thereby causing the Public Improvements to comply in all material respects with the Plans and Specifications for Public Improvements.
- (b) **Failure to Comply with Laws.** If, with respect to the Developer Components, the Developer fails to comply with applicable Laws pertaining to staging and operation of a construction site. No Uncured Default shall occur with respect to such failure if not more than ten (10) business days of Notice of Default issued by the City, the Developer (i) causes the Construction Contractor to comply with such Laws, and (ii)

provides documentation satisfactory to the City that the corrective action is sufficient.

- (c) **Substantial Completion/Parking Deck.** Failure to achieve Substantial Completion of the Parking Deck Improvements in substantial compliance with the Plans and Specifications for Public Improvements within thirty (30) months after construction has commenced thereon, except by reason of a Force Majeure Event.
- (d) **Substantial Completion/Riverwalk Improvements.** Failure to achieve Substantial Completion of the Riverwalk Improvements in substantial compliance with the Plans and Specifications for Public Improvements within thirty (30) months after construction has commenced thereon, except by reason of a Force Majeure Event.

Section 18.3 Other Events of Default. If any one or more of the Other Defaults (as hereinafter defined) occurs, the Developer shall have an obligation to notify the City of the same in writing within seven (7) calendar days of obtaining knowledge of such Event of Default. If any such Event of Default is not: (x) Cured by the Developer within the Developer Cure Period specified below; (y) Cured by a Curing Lender in accordance with Section 18.5.2 hereof; or (z) waived in writing by the City Manager, the City may issue a Public Improvements Recording Direction pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement. Each Developer Cure Period shall commence on the second day following delivery of the applicable Notice of Default by the City in accordance with Article 12 hereof (not including the day said Notice of Default is either personally delivered or deposited for delivery by a nationally recognized overnight mail courier service). In each instance, a different Cure Period may be mutually agreed upon in writing by the Parties. For Other Defaults caused by the acts or omissions of a Separate Lot Owner, the provisions of Section 18.8 shall apply. Each of the following shall be an Event of Default (collectively the “**Other Defaults**”):

- (a) **Mechanic’s Liens.** The recording of a mechanic’s lien against the Parking Deck Property or the Riverwalk Property. No Uncured Default shall occur if the Developer causes such mechanic’s lien to be released or bonded over in accordance with Section 9.4 hereof.
- (b) **Voluntary Insolvency Actions.** If the Developer makes an assignment for the benefit of creditors or files a petition in any court in bankruptcy, reorganization, composition, or makes an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of the Developer Components.
- (c) **Involuntary Insolvency Actions.** If any petition is filed against the Developer in any bankruptcy, reorganization, or insolvency proceedings. No Uncured Default shall occur if such proceedings are dismissed or vacated within ninety (90) days after such petition is filed; provided, however, the foregoing ninety (90) day Cure Period shall automatically

terminate upon the issuance of an order of relief in any such bankruptcy case.

- (d) **Receiver Appointment.** If a receiver or trustee is appointed for the Developer. No Uncured Default shall occur if such receivership or trusteeship is set aside within ninety (90) days after such appointment; provided, however, that if such receiver is appointed at the request of a Lender, such appointment shall not constitute an Event of Default pursuant to this clause (d).
- (e) **Dissolution.** If the Developer is no longer in good standing with the Illinois Secretary of State or is dissolved. No Uncured Default shall occur if the Developer is designated as being in good standing with the Illinois Secretary of State within sixty (60) days of a Notice of Default issued by the City in connection with an Event of Default under this clause (e).
- (f) **Change of Control Transfers.** If any Change of Control Transfer occurs in violation of Section 11.10 hereof and such Change of Control Transfer was not consented to in writing by the City (such consent not to be unreasonably withheld), and subject to Article 11 hereof. No Uncured Default shall occur if the Developer has (i) reversed the Transfer or (ii) obtained the City's written approval, in either case within thirty (30) days of a Notice of Default issued by the City in connection with an Event of Default under this clause (f).
- (g) **Default on Financial Obligations.** If any financial obligations owed to the City by the Developer are not paid when the same shall become due and payable and such past-due obligations or charges exceed \$5,000. No Uncured Default shall occur if any such past-due amount is fully paid within thirty (30) days of a Notice of Default issued by the City, or such longer period agreed to in writing by the City Engineer. If the Developer disputes that all, or any part, of such payment is due, the Developer shall note that the payment is disputed at the time payment is made and shall state the basis of the dispute.
- (h) **Employment Related Defaults.** If the Developer fails to comply, or fails to ensure that the Construction Contractor, or other contactors, comply with applicable Laws or regulations regarding equal employment opportunity and affirmative action programs after a finding by a State or Federal agency that a violation of such equal opportunity or affirmative action laws has occurred in connection with the development of the Water Street Parking Deck Property, the Riverwalk Improvement Property, or the Other Public Improvements. No Uncured Default shall occur if the Developer requires its contractor to take corrective action to remedy or mitigate such failure to the satisfaction of the City within thirty (30) days of a Notice of Default issued by the City under this clause (h).

- (i) **Prevailing Wage Defaults.** If the Developer fails to require the Construction Contractor, or other contractor(s), to comply with the Prevailing Wage Laws. No Uncured Default shall occur if the Developer has demanded that the Construction Contractor, or other contractor, correct such noncompliance within thirty (30) days of issuance of the Notice of Default from the City, and satisfactory evidence of such demand by the Developer and correction by the applicable contractor has been provided by the Developer to the City.
- (j) **Bond Maintenance Defaults.** If the Construction Contractor fails to obtain and continuously maintain a performance and payment bond in compliance with Section 8.1 hereof until such time as the City obtains fee simple title to the Parking Deck Property and the Riverwalk Property. No Uncured Default shall occur if a performance and payment bond that complies with the requirements of Section 8.1 hereof is put in place, and three (3) copies thereof provided to the City, within ten (10) business days of issuance of a Notice of Default by the City under this clause (j).
- (k) **Insurance Maintenance Defaults.** If the Developer fails to obtain and maintain (or cause the Construction Contractor to obtain and maintain) insurance in accordance with Article 16 hereof. No Uncured Default shall occur if: (i) the Developer or the Construction Contractor obtains such insurance within ten (10) business days of written notice from the City, and the City is reasonably satisfied that the replacement insurance adequately covers the period of time during which insurance was not in place, or (ii) the Developer already carried insurance which satisfies the requirements of Article 16 if the Construction Contractor was also carrying the required insurance but ceased to do so.
- (l) **Liens on Public Funds.** The Developer causes any lien against public funds by reason of non-payment for Other Public Improvements. No Uncured Default shall occur if within thirty (30) days of the date of filing of said lien, the Developer pays the amount of the claim underlying such lien, including any other costs or fees associated therewith necessary in order for the lien to be released, or agrees in writing to pay the cost to defend and indemnify the City in any action brought against public funds under 770 ILCS 60/23. In addition, the City may retain the Developer's letter of credit for Other Public Improvements in an amount sufficient to satisfy such claim until said claim is resolved.
- (m) **Unpermitted Transfers.** If a Transfer is made which is not compliant with the provisions of Article 11. The provisions of Article 11 shall govern with respect to an Event of Default described in this clause (r).
- (n) **All Other Defaults.** If the Developer fails to comply with any provision of this Agreement or the other Water Street Agreements other than those specifically enumerated in Section 18.1, Section 18.2, clauses (a) through

(m) of this Section 18.3, or Section 18.4 hereof. Unless a different timeframe or specific Cure Period is provided pursuant to the terms of this Agreement or any other Water Street Agreement (or unless it is specified that a Cure is not available), no Uncured Default shall occur if the Developer remedies such failure to the City's reasonable satisfaction within thirty (30) calendar days of issuance of a Notice of Default by the City, or such other timeframe agreed upon in writing by the City and the Developer.

Section 18.4 Environmental Defaults. If, in the course of preparation for or during construction of any part of the Developer Components, the Developer discovers any hazardous or potentially hazardous environmental condition which directly impacts or indirectly affects the Parking Deck Property, the Riverwalk Property or the Other Public Improvements (an "**Environmental Condition(s)**"), the Developer shall notify the City within three (3) business days of discovering such Environmental Condition. Environmental Conditions include, but are not limited to, a spill of hazardous materials. Upon discovering any Environmental Condition, the Developer and the City shall jointly determine the appropriate course of action, including whether any remediation must be undertaken in connection therewith and the time period in which the Developer must remedy the Environmental Condition (the "**Remediation Period**"). Each of the following shall be an Event of Default (collectively the "**Environmental Defaults**"):

- (a) If the Developer fails to notify the City of any Environmental Condition within three (3) business days of discovering said Environmental Condition.
- (b) If the Developer fails to cure an Environmental Condition within the applicable Remediation Period. No Uncured Default shall occur if the Developer remedies such failure to the City's reasonable satisfaction within thirty (30) calendar days of issuance of a Notice of Default by the City, or such other timeframe agreed upon by the City and the Developer.

If any such Environmental Default is not: (x) Cured by the Developer within the Developer Cure Period specified in this Section 18.4; (y) Cured by a Curing Lender in accordance with Section 18.5.2 hereof; or (z) waived in writing by the City, the City may issue a Public Improvements Recording Direction pursuant to the Public Improvements Escrow Agreement and the Purchase and Sale Agreement. The Developer Cure Period shall commence on the second day following issuance of the Notice of Default by the City given in accordance with Article 12 hereof (not including the day said Notice of Default is either personally delivered or deposited for delivery by a nationally recognized overnight mail courier service). In each instance, a different Cure Period may be mutually agreed upon in writing by the Parties.

Section 18.5 Lender Protection Provisions.

Section 18.5.1 Notice of and Rights to Cure Events of Default. If an Event of Default occurs under this Agreement, then:

- (a) The City shall, at the same time that the Notice of Default is given to the Developer, (and by a means permitted by this Agreement) give a Notice of Default to each Lender; provided that the City's obligation to provide such a Notice of Default to a Future Lender shall be subject to Section 12.3 hereof. Any such Notice of Default shall describe in reasonable detail the alleged Event of Default entitling the City to exercise any rights or remedies of the City.
- (b) Upon notice to the City given in accordance with Article 12 hereof, subject to the terms of this Section 18.5, any Lender (as a Curing Lender) shall have the right, but not the obligation, to cure any Event of Default, subject in all events to the terms of Section 18.5.5 hereof. The City shall accept a Cure initiated by a Curing Lender in fulfillment of the Developer's obligations, for the account of the Developer and with the same force and effect as if performed by the Developer, provided that such performance is rendered within the Developer Cure Period or the applicable Lender Cure Period.
- (c) If a Lender desires to exercise its rights to become a Curing Lender, then such Lender shall give written notice (a "**Lender Cure Notice**") to the City Attorney stating: (i) what, if any, action it intends to take to Cure the Event of Default in question, and (ii) whether a Lender Control Event is a prerequisite to effectuating the Cure of such Event of Default and (if a Lender Control Event is a prerequisite) the nature of the Lender Control Action which is required to be initiated by the Curing Lender.
- (d) The Lender Cure Notice may be delivered at any time during the period commencing on the date the Notice of Default is delivered and ending on: (i) the 30th day after the Notice of Default is delivered if there is no applicable Developer Cure Period; or (ii) the 30th day after the expiration of the applicable Developer Cure Period if there is a Developer Cure Period.

Section 18.5.2 Lender Cure Periods. As to any Event of Default, provided a Lender Cure Notice has been given, the following provisions shall apply to any Curing Lender:

- (a) If such Event of Default can reasonably be Cured without a Lender Control Event occurring, the Lender Cure Period shall be ninety (90) days (i) after the last day of the applicable Developer Cure Period (if a Developer Cure Period is provided with respect to such Event of Default) or (ii) after the applicable Notice of Default is delivered to the Lenders pursuant to Section 18.5.1 hereof (if no Developer Cure Period is provided with respect to such Event of Default); and
- (b) If such Event of Default cannot reasonably be Cured unless a Lender Control Event occurs, the Lender Cure Period shall be:

- (i) thirty (30) days after the date on which the Lender Control Event occurs, if the Event of Default can be fully Cured simply by the payment of money; provided that the applicable Lender Control Action is brought in accordance with Section 18.5.4 hereof; or
 - (ii) three hundred and sixty five (365) days after the date on which the Lender Control Event occurs in all other cases (such 365 day period being referred to as the “**Post Event Period**”); provided that: (A) the applicable Lender Control Action is brought in accordance with Section 18.5.4 hereof; and (ii) after the occurrence of the Lender Control Event, the Curing Lender acts with reasonable diligence during the Post Event Period to effectuate the Cure in question.
- (c) Notwithstanding the foregoing, the rights of a Lender under clause (b) of this Section 18.5.2 shall be subject to the City’s remedies under Section 18.6.6 hereof.
- (d) Notwithstanding the foregoing, nothing herein shall prevent a Curing Lender from effectuating a Cure during the applicable Developer Cure Period, and prior to the commencement of the Lender Cure Period, if it so chooses.
- (e) If more than one Curing Lender shall deliver a timely Lender Cure Notice, then each Curing Lender shall be subject to the terms of this Section 18.5 and the Lender Cure Period for each Curing Lender shall run concurrently.

Section 18.5.3 Lender Control Event. The term “**Lender Control Event**” means: (a) with respect to the Mortgage Lender or any Future Lender, the first to occur of: (i) obtaining title to the property encumbered by the applicable Permitted Mortgage or Future Mortgage (or any portion thereof) by a Transfer made in accordance with Section 11.9 hereof and/or (ii) the appointment of a receiver over the property encumbered by the applicable Permitted Mortgage or Future Mortgage (or any portion thereof) which receiver is by court order granted the full authority to effectuate the Cure in question and such receiver (in its discretion) elects to effectuate the Cure pursuant to such authority; and (b) with respect to the Mezzanine Lender, obtaining ownership of and/or control over the Developer by a Transfer made in accordance with Section 11.9(4) hereof. Within not more than fifteen (15) days after the occurrence of a Lender Control Event, the Curing Lender shall notify the City that said Lender Control Event has occurred in accordance with the notice provisions set forth in Article 12 hereof.

Section 18.5.4 Lender Control Action The term “**Lender Control Action**” means: (a) with respect to Lender Control Events of the type described in Section 18.5.3(a)(i), the filing of a mortgage foreclosure action in the Circuit Court of DuPage County; (b) with respect to Lender Control Events of the type described in Section 18.5.3(a)(ii), the filing of a petition for the appointment of a receiver, whether in connection with a mortgage foreclosure action or otherwise; and (c) with respect to

Lender Control Events of the type described in Section 18.5.3(b), the initiation of a foreclosure action or the initiation of non-judicial sale procedures or other action by the Mezzanine Lender taken in order to effectuate a Transfer pursuant to Section 11.9(4) hereof. To the extent a Lender Control Event is required in order for a Curing Lender to effectuate a Cure, then (subject to any stay in any bankruptcy proceedings affecting the Developer, or any injunction, so long as such stay or injunction has not been lifted), the Lender Control Action required to cause such Lender Control Event to occur shall be initiated by the Curing Lender within ninety (90) days after the Lender delivers the Lender Cure Notice. Once commenced, the Curing Lender shall (subject to any stay in any bankruptcy proceedings affecting the Developer, or any injunction, so long as such stay or injunction has not been lifted) diligently prosecute the Lender Control Action to completion (subject to Section 18.5.6 hereof).

Section 18.5.5 Limitation on Exercise of Cure Rights by a Lender.

Notwithstanding anything to the contrary contained in this Agreement, a Lender may exercise its rights to Cure hereunder only with respect to an Event of Default occurring with respect to that portion of the Water Street Project which is: (a) encumbered by the Permitted Mortgage, if the Mortgage Lender is the Curing Lender; (b) owned by the Developer if the Mezzanine Lender is the Curing Lender; or (c) is encumbered by the Future Mortgage, if a Future Lender is the Curing Lender. By way of example, if a Future Mortgage shall encumber only the Office Building and the Office Building Land, then the Future Lender under such Future Mortgage may only Cure an Event of Default occurring with respect to the Office Building or the Office Building Land and may not Cure an Event of Default occurring with respect to any other portions of the Water Street Project Property.

Section 18.5.6 Miscellaneous. Upon any Cure (whether by the Developer or a Curing Lender) of all then-existing Events of Default in accordance with this Agreement, this Agreement shall continue in full force and effect as if no Events of Default had occurred. A Lender shall not be required to continue to exercise its Cure rights or otherwise proceed with any Lender Control Action if and when the Event of Default in question shall have been Cured. If a Curing Lender has commenced its Cure rights, the Curing Lender may abandon or discontinue such Cure at any time, without liability to the City or any other Person. However, if after giving a Lender Cure Notice, the Curing Lender elects not to bring a Lender Control Action or voluntarily dismisses or terminates the Lender Control Action prior to the occurrence of the applicable Lender Control Event, then (unless otherwise agreed to in writing by the City) the Lender Cure Period shall expire as of the later to occur of: (a) the end of the period described in Section 18.5.2(a) hereof; or (b) the date on which the Curing Lender voluntarily dismissed or voluntarily terminated the Lender Control Action. A Curing Lender's exercise of Cure rights shall not, of itself, be deemed an assumption of this Agreement in whole or in part.

Section 18.6 Consequences in the Event of an Uncured Default.

Section 18.6.1 Remedies Generally. If an Uncured Default exists, the City shall have all of its rights and remedies under this Agreement, the Water Street Agreements, and applicable law.

Section 18.6.2 Termination of Water Street Agreements. In the event that the requirements of Section 6.7(a) or (b) hereof are not satisfied by the Developer within the timeframes set forth therein, then (after the expiration of any Lender Cure Period) an Uncured Default shall exist and the City may, in its reasonable discretion, declare by Resolution that all or any portion of its obligations described herein and in the remaining Water Street Agreements are terminated and are no longer of any force or effect. In the event of such termination by the City, the City shall not be liable to the Developer or any Lender (including but not limited to the Mortgage Lender or the Mezzanine Lender), or to the Separate Lot Owners, or to their affiliates, agents, employees, contractors, subcontractors, representatives, or consultants for any costs, fees, funding, damages, or losses, or for any potential costs, fees, funding, damages, or losses. After Construction Commencement, the City may not terminate the Water Street Agreements, but rather the City's remedies in the event of an Uncured Default shall be as set forth herein and in the other Water Street Agreements (including the following subsections of this Section 18.6).

Section 18.6.3 Public Improvements Recording Direction. If an Uncured Default exists, the City shall be entitled to give a Public Improvements Recording Direction to the Title Company, in which event the Title Company shall date and record the Parking Deck Conveyance Documents and/or the Riverwalk Conveyance Documents, as applicable, with the DuPage County Recorder so that the City takes title thereto free and clear of any encumbrances other than "Permitted Exceptions" (as defined in the Purchase and Sale Agreement).

Section 18.6.4 Waiver of Balance Due. Except as provided in Section 18.6.6 hereof, if an Uncured Default exists and the City gives a Public Improvements Recording Direction, then the City shall be permanently relieved of any obligation to pay the Balance for the Parking Deck Property and shall be entitled to direct the Title Company to immediately return the Balance (which is being held in an escrow account by the Title Company pursuant to the Public Improvements Escrow Agreement) directly to the City.

Section 18.6.5 Special Remedies as to Rebate Agreement. Except as provided in Section 18.6.6 hereof, in the event of an Uncured Default with respect to any of the Developer Components (but not the Office Building Land):

- (a) the City may terminate the Rebate Agreement; or
- (b) the City may offset any amounts due to the City on account of such Uncured Default against the Rebate Payments due under the Rebate Agreement in accordance with Section 20.1 hereof.

Section 18.6.6 City's Special Remedy of Self Help. Notwithstanding the existence of any Lender Cure Action or Lender Cure Period which may be pending, at any time when an Event(s) of Default occurs that is not Cured within any Developer Cure Period, the City may elect to proceed under this Section 18.6.6 by delivering a Public Improvements Recording Direction and elect to complete the Public Improvements on its own, provided the following conditions are satisfied:

- (a) the City shall give the Developer and all Lenders written notice of its election to proceed under this Section 18.6.6 (a “**Self-Help Notice**”) no less than five (5) business days prior to delivering the Public Improvements Recording Direction;
- (b) the Public Improvements Recording Direction must be delivered as to both the Parking Deck Property and the Riverwalk Property;
- (c) after delivery of the Self-Help Notice, neither Developer nor any Lender shall have any obligation to complete the Public Improvements or Other Public Improvements, but the City shall (except as modified below in this Section 18.6.6) retain its other rights and remedies against Developer, including the right to draw upon the letter of credit posted pursuant to Section 8.2 to pay for the Developer’s share of any incomplete Other Public Improvements;
- (d) the City shall not be entitled to retain the Balance on account of such Event(s) of Default, but rather the Balance shall be paid to Developer (or directly to Mortgage Lender if a Lender Control Action is pending) upon Substantial Completion of the Parking Deck Improvements, except that the City shall be entitled to offset any Cost Over-runs against the Balance prior to making payment of such Balance to the Developer; and
- (e) the City shall not be entitled to terminate the Rebate Agreement, but rather the Rebate Agreement shall continue in full force and effect, except that the City shall be entitled to offset any Cost Over-runs against the Rebate Payments due to be paid under the Rebate Agreement.

Section 18.6.7 No City Liability. The Developer and each Separate Lot Owner waives any claim and shall defend, indemnify and hold the City harmless in the manner provided for in Article 15 hereof in the event that there are any claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from or associated with the City’s exercise of its rights in the event of an Uncured Default (other than those resulting from the City’s willful misconduct). The Developer shall include a provision in the Construction Contract for Public Improvements requiring that the Construction Contractor shall have no rights against the City in connection with actions taken by the City by virtue of the City’s exercise of its rights in the event of an Uncured Default. Nothing in this Section 18.6.7 shall: (a) void or negate the City’s obligations under the Construction Contract for Public Improvements should the City elect to take an assignment thereof in accordance with the Public Improvements Escrow Agreement; or (b) operate to waive or render unenforceable any lien rights which the Construction Contractor may have in and to the Parking Deck Property or the Riverwalk Property as a result of the Construction Contract for Public Improvements..

Section 18.6.8 Performance Bonds. In addition, in the event of an Uncured Default (a) the City shall be entitled, as an obligee or co-obligee on the performance bonds required pursuant to Article 8 hereof, to make a demand thereon for completion of construction of the Water Street Parking Deck Improvements and/or the Riverwalk Improvements, as applicable, and (b) the City shall be entitled to direct the Title Company to provide it with an executed assignment of the Construction Contract for Public Improvements which has been deposited with the Title Company by the Developer pursuant to the Public Improvements Escrow Agreement.

Section 18.7 Defaults in other Water Street Agreements. Nothing in this Article 18, or otherwise provided herein, shall be construed to limit any rights or remedies under any of the other Water Street Agreements upon the occurrence of an Uncured Default.

Section 18.8 Separate Lot Owner Defaults. If any of the Other Defaults referred in in subsections (g) or (n) of Section 18.3 results from the acts or omissions of a Separate Lot Owner or arises in connection with respect to that portion of the Water Street Project owned by a Separate Lot Owner (i.e. the Office Building Land or the Theater Building Land), then such Other Default shall be an Event of Default hereunder, but only with respect to that specific Separate Lot Owner and the portion of the Water Street Project Property owned by such Separate Lot Owner. For purposes of interpreting whether an Other Default under subsections (g) or (n) of Section 18.3 has occurred as described in this Section 18.8, wherever it appears in either of subsection (g) or subsection (n) of Section 18.3 hereof, the term “Developer” shall be replaced with “Separate Lot Owner”. The Separate Lot Owner shall have the applicable Developer Cure Period under subsections (g) or (n) of Section 18.3. Further, any Lender to the Separate Lot Owner shall have the applicable Lender Cure Period hereunder with respect thereto. For purposes of clarity: (a) any Other Default under subsections (g) or (n) of Section 18.3 caused by a Separate Lot Owner shall not give rise to any right or remedy against the Hotel Facility Owner, the Developer or any other Separate Lot Owner; (b) any Uncured Default caused by the Hotel Facility Owner shall not give rise to any right or remedy against any Separate Lot Owner or the Developer (if the Developer is not then the Hotel Facility Owner).

ARTICLE 19 TERM

Section 19.1 Term of this Agreement.

19.1.1 Commencement of Term. The Term of this Agreement shall commence on the date it is fully executed by both Parties hereto and is recorded with the DuPage County Recorder along with the fully executed Public Improvements Escrow Agreement, Purchase and Sale Agreement, Rebate Agreement and Parking Facility License Agreement. Further, concurrently with the recording of this Agreement, the Developer shall cause the Mortgage Lender and the Mezzanine Lender to deliver the Lender Acknowledgement.

19.1.2 End of Term. This Agreement shall terminate on the later to occur of: (i) the Rebate Expiration Date (as defined in the Rebate Agreement; or (ii) the date on which

the Water Street TIF District terminates. This Agreement may also be terminated before either of such dates in accordance with Section 18.6.2 hereof.

ARTICLE 20 OTHER PROVISIONS

Section 20.1 Offset of Rebate Payments. Except as provided in Section 6.23(ii) hereof, if any failure to reimburse or pay when due any fee, real property taxes, debt, or payment (including but not limited to payments due under the Parking Facility License Agreement, and fees or penalties applicable to any of the aforesaid, and costs associated with payment of mechanic's liens if the Developer has not timely removed mechanic's liens) results in an Uncured Default pursuant to the terms of Article 18 hereof, the City shall have the right to offset such amounts against any Rebate Payments due under the Rebate Agreement, or which shall become due thereunder, in the amounts in question plus interest at the rate set forth in Section 21.20. Prior to any offset against Rebate Payments, the City shall give the Notice of Default and allow for all Cure Periods as provided in Article 18 hereof. Interest as provided shall not be tolled by such notice or any applicable Cure Period.

Section 20.2 Real Property Taxes. The Developer shall be responsible for all real property taxes with respect to the Parking Deck Property and the Riverwalk Property that accrue before the conveyance of said Properties to the City as provided herein and in the Purchase and Sale Agreement and the Public Improvements Escrow Agreement. In the event that the City receives a bill for real property taxes which accrued prior to conveyance of title to the City of the Parking Deck Property or the Riverwalk Property, the City shall remit said bill or bills to the Developer for prompt payment. In the event that such bill or bills are not paid within thirty-five (35) days of issuance of notice to the Developer given in accordance with Article 12 hereof, the City may, without further notice, and without waiving any rights herein or in any other Water Street Agreement, pay such taxes and associated fees and penalties (if any) and then offset such amounts as described in Section 20.1 hereof and/or take such other action at law or in equity as it deems necessary to recoup the payment, including but not limited to reasonable attorneys' fees and costs associated with such action. The provisions of the Water Street Parking Facility License Agreement shall govern payment of real property taxes imposed, if any, with respect to Reserved Parking Spaces.

Section 20.3 SSA 21/24 Expansion. In accordance with Ordinance 08-200, the parcels included in the Water Street Project Property shall be included and contribute to all current Special Service Areas in downtown Naperville, as amended from time to time. The City shall initiate the expansion of the boundaries of Special Service Areas 21 and 24 (or as such Special Service Areas may be renumbered at the time of expansion) for those parcels not included within said Special Service Areas as of the Effective Date of this Agreement.

Section 20.4 Traffic Management Study/Traffic Signal. The Developer shall pay to the City:

- (a) 50%, equal to \$22,738.11, of the costs of the South Downtown Traffic Management Study, at the time that the Developer closes on its Mortgage Loan;

- (b) 50%, equal to \$5,375.60, of the costs of the design of the traffic signal to be constructed at Aurora and Webster Streets, at the time that the Developer closes on its Mortgage Loan; and
- (c) 50%, equal to \$150,000.00 (estimated; cost to be finalized), of the costs of the construction of the traffic signal to be constructed at Aurora and Webster Streets, within thirty (30) days of receipt of an invoice therefore from the City after completion of construction.

Section 20.5 Recapture. In the event that the Developer intends to seek a recapture agreement for any Public Improvements costs against the property at 315 South Main Street (commonly known as the River Main Development) as provided in the OAA per Ordinance 14-170, such request shall be tendered to the City Engineer and the City Attorney within eighteen (18) months of completion of construction of the improvements described therein and accompanied by a draft of the proposed recapture agreement and documentation demonstrating the “as built” costs of such improvements. If such request, the proposed recapture agreement, and supporting documentation are not provided to the City within said eighteen (18) month timeframe, the City shall no longer have any obligation to enter into a recapture agreement.

Section 20.6 No Broker. The Developer and the City both represent to the other that they have not employed the services of any real estate broker or salesperson in connection with this Agreement or the Developer’s acquisition of the Water Street Project Property. The Developer agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims for any real estate broker commissions or brokerage fees as a consequence of any action of the Developer in connection with this Agreement. The City agrees to indemnify, defend and hold harmless the Developer, its officers and employees from any and all claims for any real estate broker commissions or brokerage fees as a consequence of any action of the City in connection with this Agreement.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1 Time is of the Essence. Time is of the essence to this Agreement.

Section 21.2 Defined Terms. Where a term is capitalized herein, it is either defined herein or is defined in another Water Street Agreement, as specified.

Section 21.3 Severability. The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions contained herein and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.

Section 21.4 Ambiguities. 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.

Section 21.5 Exhibits. All exhibits attached hereto or referred to herein shall be made part hereof and incorporated herein.

Section 21.6 Attorneys' Fees and Costs. In the event of any litigation hereunder, the Developer shall promptly reimburse the City for its reasonable attorneys' fees (for in-house outside counsel engaged by the City) plus costs to the extent that the City prevails in such action. If the cost of in-house counsel is to be assessed pursuant to any of the Water Street Agreements, then the hourly rates therefor must be reasonable and such in-house counsel shall be required to keep detailed time sheets for expenses incurred for which reimbursement is sought.

Section 21.7 Choice of Law/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.

Section 21.8 Cumulative Rights and Remedies. The rights and remedies of the Parties to this Agreement, whether provided by Law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies.

Section 21.9 Copies of Agreements. The Developer shall provide the City Engineer, at no charge, with: (i) a copy of its agreements, as modified or amended from time to time, with the Mortgage Lender, Mezzanine Lender, or any successor in interest to either, (ii) a copy of its agreement, and any modifications thereto, with the Construction Contractor and other contractor for the Developer Components, and (iii) any other documents or agreements reasonably requested by the City which are related to the Developer Components.

Section 21.10 Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."
- (d) When the words "day" or "days" are used herein, calendar days are intended unless business days are specified. Business days shall be those days on which the City of Naperville is open for business excluding Saturdays, Sundays and the following holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Veteran's Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, and Christmas Day.

Section 21.11 No Waiver of Fees. Nothing herein shall be construed as a waiver of any fees required under any applicable law, including but not limited to City of Naperville permit requirements and fees associated therewith.

Section 21.12 Headings. The headings contained herein are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.

Section 21.13 Covenants Running with the Land. The Developer, each Separate Lot Owner, and the City intend this Agreement to be a covenant running with the land that shall bind all Transferees and successors in interest, but only for the term of this Agreement.

Section 21.14 Recordation. The Developer, each Separate Lot Owner and the City hereby consent to recording this Agreement and the remaining Water Street Agreements against the Water Street Project Property in the Office of the DuPage County Recorder. The Developer shall cause said recording to occur and shall pay for all fees and charges incurred therewith. Upon recording, the Developer shall promptly transmit to the City Attorney an executed original of this Agreement showing the date and recording number of record. Wherever it is provided herein, or in the other Water Street Agreements, that the Developer shall record any other document with the DuPage County Recorder, the Developer shall cause said recording to occur and shall pay for all fees and charges incurred therewith. The Developer shall then promptly transmit to the City Attorney an executed original or copy thereof showing the date and recording number of record.

Section 21.15 No Waiver. Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

Section 21.16 Amendments. No alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties hereto unless signed by the parties hereto or their permitted successors and assigns and reduced in writing and signed by them.

Section 21.17 Survival. Article 15 shall survive the termination or expiration of this Agreement, provided, however, Article 15 shall survive only with respect to claims arising out of acts or omissions which occurred prior to the termination or expiration of this Agreement. Notwithstanding the foregoing, the termination or expiration of this Agreement shall not operate to waive any claim that the City may be able to make for indemnity or payment of any amounts due from the Developer or Separate Lot Owner pursuant to this Agreement or the other Water Street Agreements. Additionally, the following sections and Article shall survive the termination or expiration of this Agreement: 5.4, 5.5, 6.6.2, 6.6.3.1, 7.10.5, 7.16, 8.7, 17.3, 19.1.2, 20.2, 20.3, 20.4(c), 20.5 and all of Articles 9, 12, and 21.

Section 21.18 Authorization to Execute. The Developer's authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the Developer's members or its operating agreement to execute this Agreement on its behalf. The City Manager and the City Clerk hereby warrant that they have been lawfully authorized by the City Council to execute this Agreement. Within five (5) days of a request from either Party, the other Party shall deliver to the other copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence such Party's authorized representatives' authority to so execute this Agreement on behalf of the applicable Parties.

Section 21.19 Confidentiality of Information Regarding Creditworthiness. In the event that the City is provided financial statements or other documents in order to prove the

creditworthiness of the Developer or any Transferee (“**Credit Documents**”), including all Documentation of Creditworthiness and documents provided in accordance with Sections 3.4 and 6.7(a) hereof, the City shall maintain such Credit Documents (and the contents thereof) as confidential and shall not disclose or place those items in the public record. Notwithstanding the foregoing, if required pursuant to the Freedom of Information Act (or other applicable Law), the City may disclose the Credit Documents (or parts thereof) to those persons legally entitled to same, but only after providing the Developer with notice of such request (which may be given by email) prior to the release of such information. Though the City will use good faith efforts to comply with the provisions set forth in this Section 21.19, the City shall not be in default hereunder or in any way liable to the Developer or any other individual or entity in the event that it fails to comply with this provision.

Section 21.20 Interest on Amounts Owed to City. Except as otherwise provided herein, where amounts due to the City are not timely paid, the City shall be entitled to interest from the date such payment was due through the date of actual payment at a rate of LIBOR plus two (2) basis points. Said interest shall continue to accrue during any applicable Cure Period.

Section 21.21 Effective Date. The Effective Date of this Agreement shall be the date, after it is fully executed by both Parties, on which it is recorded with the DuPage County Recorder as provided herein.

[remainder of page intentionally left blank]

[signatures follow on next page S-1]

IN WITNESS WHEREOF, this Water Street Redevelopment Agreement has been executed by the City and the Developer as of this _____ days of _____, 2015.

DEVELOPER:

WATER STREET PROPERTY OWNER, LLC,
a Delaware limited liability company

By: Water Street Property Mezz, LLC, a Delaware limited liability company, its Member

By: Marquette Water Street Venture, LLC, an Illinois limited liability company, its Member

By: MP Water Street District, LLC, an Illinois limited liability company, its Manager

By: _____
Name: Nicholas M. Ryan
Title: Manager

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

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

[ACKNOWLEDGEMENTS FOLLOW ON PAGE S-2]

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Douglas A. Krieger, personally known to me to be the City Manager of the City of Naperville, and Pam LaFeber, Ph.D. personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the City Manager and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this _____ day of _____, 2015.

(seal)

Notary Public

STATE OF _____)
)SS
COUNTY OF _____)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Nicholas M. Ryan, Manager of MP Water Street District, LLC, an Illinois limited liability company and the Manager of Marquette Water Street Venture, LLC, an Illinois limited liability company and the Member of Water Street Property Mezz, LLC, a Delaware limited liability company and the Member of Water Street Property Owner, LLC, a Delaware limited liability company, being personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered this said instrument as his/her own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2015.

Notary Public

Exhibit 1

Legal Description of Water Street Project Property

NORTH PHASE

Existing Legal Description

LOTS 3 THROUGH 7 INCLUSIVE IN BLOCK ONE IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-440-004; 07-13-440-005

Existing Addresses

117 Water Street
121 Water Street
123 Water Street
125 Water Street

Future Legal Description

LOTS 1 THROUGH 4 INCLUSIVE IN THE WATER STREET DISTRICT NORTH PHASE, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PINS to be determined

Future Addresses to be determined

SOUTH PHASE

Existing Legal Description

LOTS 2 THROUGH 8 INCLUSIVE IN BLOCK FOUR, A NINE (9') STRIP OF TO BE VACATED WATER STREET LYING IMMEDIATELY NORTH OF SAID LOTS THROUGH 8 INCLUSIVE, AND LOT 9 AND THAT PART OF LOT 10, IN BLOCK FOUR DESCRIBED BY BEGINNING AT THE SOUTHWEST CORNER OF LOT 9, AFORESAID, AND RUNNING THENCE EAST 60 FEET ALONG AURORA AVENUE (FORMERLY KNOWN AS HIGH STREET); THENCE NORTH PARALLEL WITH WEBSTER STREET, TO THE NORTH LINE OF LOT 10, AFORESAID; THENCE WEST ON THE NORTH LINE OF LOTS

9 AND 10, A DISTANCE OF 60 FEET; THENCE SOUTH ON THE EAST LINE OF WEBSTER STREET TO THE POINT OF BEGINNING, IN BLOCK FOUR IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-442-001; 07-13-442-002; 07-13-442-003; 07-13-442-004; 07-13-442-005; 07-13-442-006;
07-13-442-010; 07-13-442-020

Existing Addresses

112 Water Street
124 Water Street
126 Water Street
130 Water Street
134 Water Street
140 Water Street
336 South Webster Street
141 Aurora Avenue

Future Legal Description

LOTS 1 THROUGH 3 INCLUSIVE IN THE WATER STREET DISTRICT SOUTH PHASE, BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PINS to be determined

Future Addresses to be determined

Exhibit 2

Depiction of Water Street Project Property

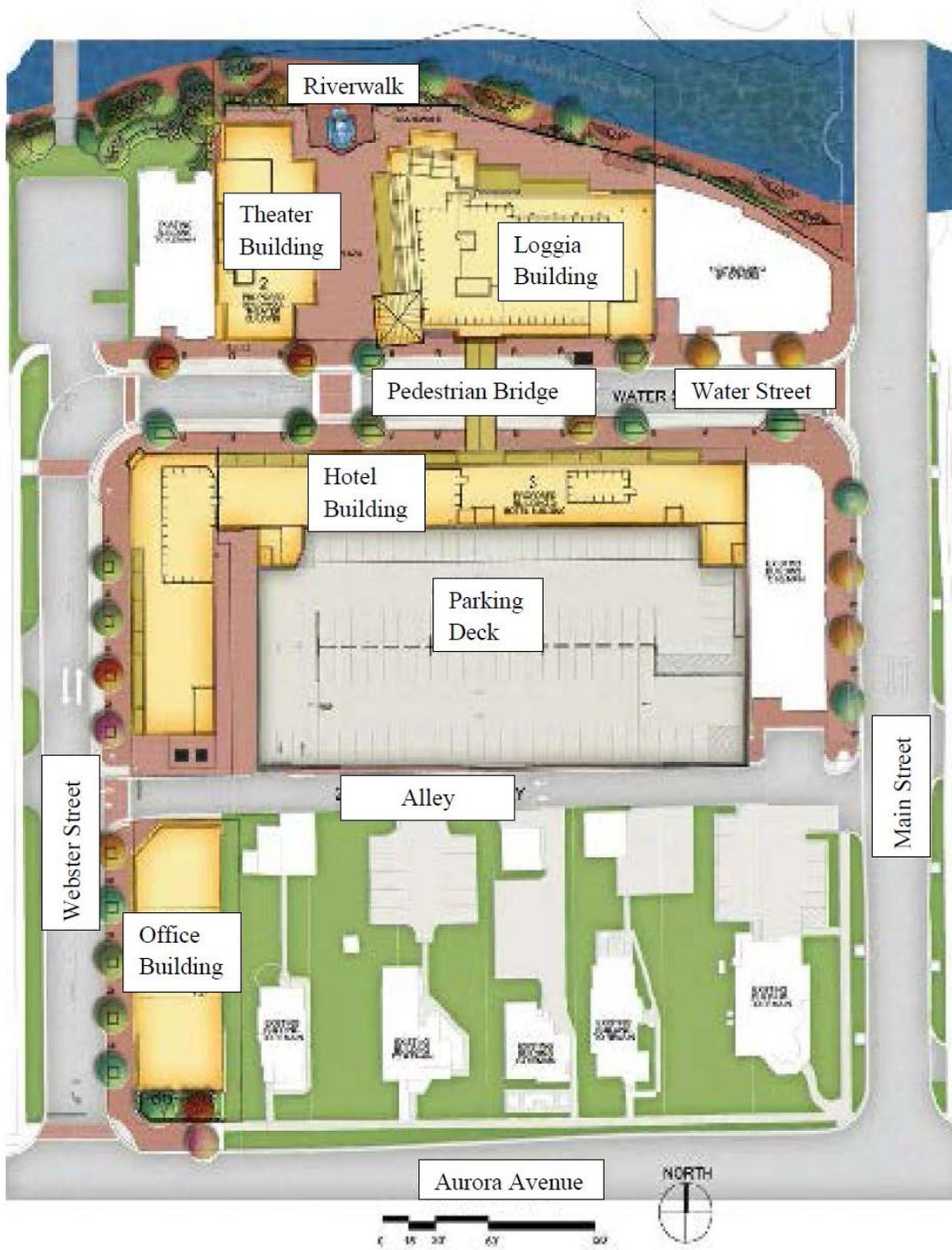


Exhibit 3

Legal Description of Office Building Land

Existing Legal Description

LOT 9 AND THAT PART OF LOT 10 IN BLOCK FOUR DESCRIBED BY BEGINNING AT THE SOUTHWEST CORNER OF LOT 9, AFORESAID, AND RUNNING THENCE EAST 60 FEET ALONG AURORA AVENUE (FORMERLY KNOWN AS HIGH STREET); THENCE NORTH PARALLEL WITH WEBSTER STREET, TO THE NORTH LINE OF LOT 10, AFORESAID; THENCE WEST ON THE NORTH LINE OF LOTS 9 AND 10, A DISTANCE OF 60 FEET; THENCE SOUTH ON THE EAST LINE OF WEBSTER STREET TO THE POINT OF BEGINNING, IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-442-010

Existing Addresses

141 Aurora Avenue

Future Legal Description

LOT 3 IN THE WATER STREET DISTRICT SOUTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PIN to be determined

Future Address to be determined

Exhibit 4

Legal Description of Parking Deck Land

Existing Legal Description

PARTS OF LOTS 2 THROUGH 7 INCLUSIVE IN BLOCK FOUR IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-442-003; 07-13-442-004; 07-13-442-005; 07-13-442-006; 07-13-442-020

Existing Addresses

112 Water Street
124 Water Street
126 Water Street
130 Water Street
134 Water Street

Future Legal Description

LOT 2 IN THE WATER STREET DISTRICT SOUTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PIN to be determined

Future Address to be determined

Exhibit 5

Legal Description of Riverwalk Land

Existing Legal Description

PARTS OF LOTS 3 THROUGH 7 INCLUSIVE IN BLOCK ONE IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-440-004; 07-13-440-005

Existing Addresses

117 Water Street
121 Water Street
123 Water Street
125 Water Street

Future Legal Description

LOT 4 IN THE WATER STREET DISTRICT NORTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PIN to be determined

Future Address to be determined

Exhibit 6

Legal Description of Hotel Land

Existing Legal Description

PARTS OF LOTS 3 THROUGH 7 INCLUSIVE IN BLOCK ONE AND PARTS OF LOTS 2 THROUGH 8 INCLUSIVE IN BLOCK FOUR IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-440-004; 07-13-440-005 07-13-442-001-006; 07-13-442-020

Existing Addresses

117 Water Street
121 Water Street
123 Water Street
125 Water Street
112 Water Street
124 Water Street
126 Water Street
130 Water Street
134 Water Street
140 Water Street
336 South Webster Street

Future Legal Description

LOTS 1 AND 3 IN THE WATER STREET DISTRICT NORTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ____ AS DOCUMENT NO. ____ IN DUPAGE COUNTY, ILLINOIS AND LOT 1 IN THE WATER STREET DISTRICT SOUTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____ AS DOCUMENT NO. _____ IN DUPAGE COUNTY, ILLINOIS.

Future PIN to be determined

Future Address to be determined

Exhibit 7

Legal Description of Theater Land

Existing Legal Description

PARTS OF LOTS 6 AND 7 INCLUSIVE IN BLOCK ONE IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584, IN DUPAGE COUNTY, ILLINOIS.

Existing PINS

07-13-440-004; 07-13-440-005

Existing Addresses

121-125 Water Street

Future Legal Description

LOT 2 IN THE WATER STREET DISTRICT NORTH PHASE BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ____ AS DOCUMENT NO. ____ IN DUPAGE COUNTY, ILLINOIS.

Future PIN to be determined

Future Address to be determined

Exhibit 8

Water Street Project Construction Costs

**Development Budget Summary
Water Street District**

	Total
ACQUISITION COSTS	
Land	\$15,400,000
Closing Costs	\$0
Pre-Paid Development Costs	\$0
Total Acquisition Costs	\$15,400,000
HARD COSTS	
Site Work	\$8,157,385
Construction Costs - Hotel Building & Bridge	\$15,055,648
Construction Costs - Parking Garage Building	\$10,433,312
Construction Costs - Theater Building	\$3,337,882
Construction Costs - Loggia Building	\$13,363,690
Hard Cost Contingency	\$2,500,000
Total Hard Costs	\$52,847,917
SOFT COSTS	
Architectural / Engineering / Design	\$3,158,138
Consultants / Third Parties	\$161,504
Legal	\$1,100,000
Fees and Permits	\$932,907
Marketing / Administrative / Misc.	\$425,000
Hotel Soft Costs (FF&E, OS&E, OPS RES)	\$4,250,600
Retail Leasing Costs (TI, LL, COMM)	\$4,471,314
Taxes & Insurance	\$835,297
Construction Financing Costs	\$2,808,518
Mezz Loan Financing Costs	\$3,958,620
Soft Cost Contingency / Fees & Ovhd	\$2,500,000
Construction Management Fee	\$250,000
Total Soft Costs	\$24,851,897
TOTAL PROJECT COSTS	\$93,099,814

Exhibit 9

Assumption of Obligations

PREPARED BY:

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Legal Department/City Attorney
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

(Space above this line for Recorder's use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is entered into as of the _____ day of _____, 20____, by and among _____ ("**Assignor**"), and _____ ("**Assignee**").

RECITALS

A. Water Street Property Owner, LLC, a Delaware limited liability company (the "**Developer**"), has entered into that certain Water Street Redevelopment Agreement dated _____ (as amended, the "**Redevelopment Agreement**") with the City of Naperville, Illinois, an Illinois municipal home rule corporation (the "**City**") which Redevelopment Agreement was recorded in the records of DuPage County on _____ as document number _____.

B. The Redevelopment Agreement (along with the other Water Street Agreements, as defined in the Redevelopment Agreement) was executed to facilitate the redevelopment of the Water Street Project Property, which is described in the Redevelopment Agreement. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement.

[NOTE TO PREPARER: INCLUDE THOSE OF THE FOLLOWING RECITALS AS MAY BE APPROPRIATE]

OPTIONAL RECITAL 1 [USE IF PRIOR ASSIGNMENTS HAVE OCCURRED AS TO THE TRANSFERRED PROPERTY] Pursuant to an Assignment and Assumption Agreement dated _____ between _____ and Assignor which was recorded on _____ as document number _____, Assignor became the Developer under the Redevelopment Agreement and was assigned the Developer's interest in the Redevelopment Agreement and (in turn) Assignor assumed all of the obligations of the Developer under the Redevelopment Agreement.

OPTIONAL RECITAL 2 [USE IF ALL OF THE WATER STREET PROJECT PROPERTY IS BEING TRANSFERRED] Assignor desires to now transfer to Assignee: (a) its interest in the property identified on Exhibit A (the "**Transferred Property**") to this Agreement which constitutes all of the Water Street Project Property (Note: exclude Parking Deck Property and the Riverwalk Property if such have been conveyed to the City); and (b) its interest as the Developer under the Redevelopment Agreement and the other Water Street Agreements. Assignor desires to so acquire the Transferred Property from the Assignor and to become the Developer under the Redevelopment Agreement and the other Water Street Agreements.

OPTIONAL RECITAL 3 [USE IF HOTEL LAND IS BEING TRANSFERRED AND A NEW DEVELOPER CREATED] Assignor desires to now transfer to Assignee: (a) its interest in the property identified on Exhibit A (the "**Transferred Property**") to this Agreement which constitutes all of the Hotel Land and Hotel Facility; and (b) its interest as the Developer under the Redevelopment Agreement and the other Water Street Agreements. Assignor desires to so acquire the Transferred Property from the Assignor and to become the Developer under the Redevelopment Agreement and the other Water Street Agreements.

OPTIONAL RECITAL 4 [USE IF THE THEATER BUILDING LAND OR THE OFFICE BUILDING LAND ARE BEING TRANSFERRED TO A SEPARATE LOT OWNER] Assignor desires to now transfer to Assignee its interest in the property identified on Exhibit A (the "**Transferred Property**") to this Agreement which constitutes [_____]; and Assignor shall become a Separate Lot Owner as to the Transferred Land under the Redevelopment Agreement. Assignor desires to so acquire the Transferred Property from the Assignor and to become a Separate Lot Owner as to the Transferred Property.

AGREEMENT

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Redevelopment Agreement as such relate to the Transferred Property (collectively, "**Rights and Obligations**"). [INCLUDE IN CONJUNCTION WITH OPTIONAL RECITALS 2 AND 3 ABOVE: It is expressly agreed that the Rights and Obligations transferred and assigned hereby shall include all of the Assignor's rights and obligations as the Developer under the Redevelopment Agreement.]

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations, as

such relate to the Transferred Property. Assignee agrees, expressly for the benefit of the City, to comply with, perform and execute all of the covenants and obligations of Assignor under the Redevelopment Agreement.

3. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Redevelopment Agreement as to the Transferred Property. [INCLUDE IN CONJUNCTION WITH OPTIONAL RECITALS 2 AND 3 ABOVE: Whenever the term "Developer" appears in the Redevelopment Agreement and the other Water Street Agreements, it shall hereafter mean Assignee. [INCLUDE IN CONJUNCTION WITH OPTIONAL RECITAL 4 ABOVE: It is expressly agreed that Assignee shall become a Separate Lot Owner with respect to the Transferred Property, but shall not become the Developer. In that regard, Assignee specifically acknowledges its indemnity obligations pursuant to Section 15.2 of the Redevelopment Agreement.]

4. Redevelopment Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Redevelopment Agreement are hereby ratified and shall remain in full force and effect.

5. Recording. Assignor shall cause this Agreement to be recorded in the Official Records of DuPage County, Illinois, and shall promptly provide conformed copies of the recorded Agreement to Assignee and the City.

6. Successors and Assigns. Subject to the restrictions on transfer set forth in the Redevelopment Agreement, all of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

7. Assignee Address for Notices. The address of Assignee for the purpose of notices, demands and communications under the Redevelopment Agreement shall be:

[INSERT ASSIGNEE'S ADDRESS]

8. Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Circuit Court of DuPage County, Illinois.

9. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

10. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

11. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

13. Effective Date. The Effective Date of this Agreement shall be the date of this Agreement first set forth above which shall be the date upon which Assignee obtains fee title to the Transferred Property ("**Effective Date**").

[ADD THE FOLLOWING ONLY IF THE TRANSFER IS MADE AT A TIME WHEN THE WATER STREET TIF DISTRICT OR REBATE AGREEMENT REMAIN IN EFFECT]

14. City Approval. Subject to the provisions of 14.1 of the Redevelopment Agreement, by executing below, the City hereby executes this Assignment for the sole and limited purpose of acknowledging that Assignor and Assignee have complied with all requirements of Article 11 of the Redevelopment Agreement which are a condition to the effectiveness of this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have entered into this Agreement as of the date first above written.

[INSERT SIGNATURE PAGES AND NOTARY BLOCKS
FOR ASSIGNOR AND ASSIGNEE]

[ADD EXHIBIT A WHICH DESCRIBES THE TRANSFERRED PROPERTY]

[[INSERT SIGNATURE PAGE AND NOTARY BLOCK
FOR CITY ONLY IF THE TRANSFER IS MADE AT A TIME WHEN THE WATER STREET
TIF DISTRICT OR REBATE AGREEMENT REMAIN IN EFFECT]

Exhibit 10

Total Public Improvement Cost

WATER STREET DISTRICT REDEVELOPMENT AGREEMENT
 EXHIBIT 10
 Public Improvement Costs

February 2015

	PUBLIC IMPROVEMENT	COST	DEVELOPER		PUBLIC	
			Cost Share	%	Cost Share	%
1	Riverwalk*	\$ 1,884,772	\$ -	0%	\$ 1,884,772	100%
2	Parking Deck*	\$ 10,716,106	\$ -	0%	\$ 10,716,106	100%
3	Parking Deck - Land	\$ 3,242,000	\$ -	0%	\$ 3,242,000	100%
4	ROW (9' strip) Vacation	\$ 403,512	\$ 403,512	100%	\$ -	0%
5	Stormwater Detention*	\$ 1,621,821	\$ 924,438	57%	\$ 697,383	43%
6	Alley*	\$ 200,105	\$ -	0%	\$ 200,105	100%
7	Site Work (Demo, Excavation, Misc.)*	\$ 1,933,014	\$ 846,559	44%	\$ 1,086,455	56%
8	Water St & Webster St Reconstruction*	\$ 1,688,821	\$ 1,363,991	81%	\$ 324,830	19%
9	Boardwalk & Plaza*	\$ 791,398	\$ 791,398	100%	\$ -	0%
10	Traffic Study & Improvements ¹	\$ 350,000	\$ 175,000	50%	\$ 175,000	50%
11	Water Street Electric Burial	\$ 253,350	\$ 253,350	100%	\$ -	0%
12	Alley Electric Burial & Refeed Aurora Av Properties ²	\$ 125,000	\$ -	0%	\$ 125,000	100%
13	Parking Fee-In-Lieu	\$ 577,954	\$ 577,954	100%	\$ -	0%
	TOTAL	\$ 23,787,853	\$ 5,336,201	22%	\$ 18,451,652	78%

¹ Budget Estimate - see Section 20.4 for additional detail
² Cost to be determined by Naperville Department of Public Utilities - Electric
 * Public Improvements Costs = GMP + 3% Owner's Contingency

Exhibit 11

Public Improvements Schedule of Values

BID SUMMARY

Water Street Naperville
Parking Structure

Lend Lease
Parking Garage
9/12/2014

	Value	Division Total
0 Explanation/Instructions		\$0
1. General Requirements	\$	51,900
2. Existing Conditions	\$	-
3 Concrete	\$	6,333,331
4. Masonry / Stone	\$	111,320
5. Miscellaneous Metals	\$	430,986
6 Wood, Plastic and Composites	\$	28,511
7 Thermal and Moisture Protection	\$	212,278
8 Openings	\$	99,279
9 Finishes	\$	222,287
10. Specialties	\$	1,658
11. Equipment		\$0
12. Furnishings		\$0
13 Special Construction		\$0
14. Conveying Equipment	\$	218,872
21 Fire Protection		\$194,610
22 Plumbing	\$	172,372
23 HVAC	\$	54,600
25 Integrated Automation		\$0
26 Electrical /Low Voltage	\$	585,750
31 Earthwork	\$	283,711
32 Exterior Improvements	\$	-
33 Utilities		\$0
33 Other	\$	425,000
Sub-Total Trades		\$9,426,465
GC General Conditions	\$	377,059
GC Fee	\$	282,794
Insurance	\$	89,707
Sub Total		\$10,176,025
Bond	\$	61,272
Contingency	3.0% \$	282,794
Soft Costs (Design Fees & Builders Risk)	\$	196,015
Total Bid		\$10,716,106

Individual Line Items budgets are not guaranteed.
Bids based upon Exhibit A (Drawings List) dated 5/20/14, and Addendums 1-4
Final award to subcontractors shall be subject to prequalification.
Hazardous or Special Waste removal is excluded (allowance identified in budget) along with concealed or unknown subsurface conditions.
Builders Risk Insurance is estimated and supplied by Owner.

SITework SUMMARY - SCHEDULE OF VALUES

CSI Code	Sec	Trade/Description	Amount	Public %	Private %
1	1.100	Permits & Design Fees			
Total Permits & Design Fees			\$ 356,605	\$ 345,205 97%	\$ 11,400 3%
1	1.102	Demolition / Site Clearing			
Total Demolition / Site Clearing			\$ 478,174	\$ 279,432 58%	\$ 198,741 42%
2	2.200	Excavation & Backfill			
Total Excavation & Backfill			\$ 1,085,137	\$ 761,008 70%	\$ 324,129 30%
2	2.400	Site Utilities			
Total Site Utilities			\$ -	With Plumbing	
2	2.500	Landscaping and Hardscaping			
Total Landscaping and Hardscaping			\$ 437,140	\$ 235,263 54%	\$ 201,877 46%
3	3.200	Masonry			
Total Masonry			\$ 224,000	\$ 79,000 35%	\$ 145,000 65%
2	2.400	Irrigation			
Total Irrigation			\$ 32,560	\$ - 0%	\$ 32,560 100%
2	2.500	Misc. Metals			
Total Misc. Metals			\$ 163,040	\$ - 0%	\$ 163,040 100%
3	3.200	Site Concrete			
Total Concrete			\$ 1,668,476	\$ 1,024,458 61%	\$ 644,018 39%
3	3.205	Asphalt / Roadway Paving			
Total Asphalt Paving			\$ 394,130	\$ 349,130 89%	\$ 45,000 11%
3	3.218	Brick Pavers			
Total Brick Pavers			\$ 235,084	\$ 39,822 17%	\$ 195,262 83%
		Precast Planks			
Total Precast Planks			\$ 169,804	\$ 73,016 43%	\$ 96,789 57%
15	15.300	Fire Protection			
Total Fire Protection			\$ -		
15	15.400	Plumbing			
Total Plumbing			\$ 689,510	\$ 115,477 17%	\$ 574,034 83%
15	15.433	Fountain			
Total Fountain			\$ 265,000	\$ - 0%	\$ 265,000 100%
16	16.100	Electrical			
Total Electrical			\$ 997,860	\$ 386,951 39%	\$ 610,909 61%
Total Trade Cost			\$ 7,196,520	\$ 3,688,762 51%	\$ 3,507,758 49%
General Conditions / Insurance / Fee			\$611,704	\$313,545	\$298,159
Preconstruction			\$270,000	\$40,000	\$230,000
GC Bond (65%)			\$46,777	\$23,977	\$22,800
Insurance (builders risk)			\$32,384	\$16,599	\$15,785
Sub Total			\$ 8,157,385	\$ 4,082,883	\$ 4,074,503
Owners Contingency 3%			\$215,896	\$110,663	\$105,233
Total Cost with Contingency			\$ 8,373,281	\$ 4,193,546	\$ 4,179,736

Notes:

Individual Line Items budgets are not guaranteed.
Bids based upon Exhibit A (Drawings List) dated 5/20/14, Addendums 1-4
Final award to subcontractors shall be subject to prequalification.
Hazardous or Special Waste removal is excluded (allowance identified in budget)
along with concealed or unknown subsurface conditions.
Builders Risk Insurance is estimated and supplied by Owner.