

**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
PARKING FACILITY LICENSE 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
PARKING FACILITY LICENSE AGREEMENT**

THIS PARKING FACILITY LICENSE AGREEMENT (“**Agreement**”) is dated as of _____, 2015 (the “**Effective Date**”) and is made between the City of Naperville, an Illinois Municipal Corporation and home rule unit of local government under the Constitution and laws of the State of Illinois (“**City**”), and the Water Street Property Owner, LLC, a Delaware limited liability company (“**Developer**”).

R E C I T A L S

A. The Developer is the owner of the real property legally described in **Exhibit A** hereto (the “**Hotel Land**”) which is part of the Water Street Property which Water Street Property is depicted on **Exhibit B** hereto (the “**Water Street Project Property**”).

B. The Developer and the City have entered into a Redevelopment Agreement of even date herewith which is being recorded immediately prior to the recordation of this Agreement (the “**Redevelopment Agreement**”). Pursuant to the Redevelopment Agreement, the Developer intends to construct a multi-use commercial development on the Water Street Project Property which shall include the Hotel Facility on the Hotel Land.

C. Concurrently with this Agreement, the City and the Developer are entering into several other agreements with respect to the Water Street Project Property, including but not limited to the Redevelopment Agreement, a Rebate Agreement and a Purchase and Sale Agreement.

D. Upon completion of the Parking Deck Improvements, the Parking Deck Land and the Parking Deck Improvements will be conveyed to the City as a public parking facility, subject to this Agreement. The Parking Deck Land is legally described on **Exhibit C** hereto.

E. Under the terms of the Redevelopment Agreement, the City has agreed to enter into this Agreement for the purpose of reserving one hundred twenty (120) parking spaces within the Parking Deck Improvements for exclusive use by the Hotel Facility in order to provide the parking required by Ordinance 14-170 passed by the City of Naperville approving a major change to the Final Planned Unit Development for the Water Street District.

F. The Taxable Bonds will be issued by the City to fund construction of the Reserved Parking Spaces, for which the City will be reimbursed through payment of the Initial Term License Fee as provided herein.

G. The City and the Developer desire to enter into this Agreement relating to the use of the Reserved Parking Spaces by the Hotel Operator.

H. Pursuant to the terms of the Redevelopment Agreement, the City and the Developer shall also enter into a Parking Overflow Agreement with respect to overnight use of parking spaces within the Parking Deck Improvements that are in addition to the Reserved Parking Spaces provided for herein.

STATEMENT OF GENERAL PURPOSE

In connection with the operation of the Hotel Facility, the Developer and the City desire to provide the Reserved Parking Spaces for the exclusive use of the Permitted Users of the Hotel Facility. The Hotel Operator existing from time-to-time pursuant to this Agreement will be the person responsible for the operation of the Hotel Facility and the use of the Reserved Parking Spaces in accordance with this Agreement. As of the Effective Date, the Developer is the Hotel Facility Owner and is therefore the Hotel Operator for purposes of this Agreement. However, because of the nature of the operation of the Hotel Facility, it is possible that the Hotel Operator will not be the fee title holder to the Hotel Land, but rather may be a Hotel Master Tenant pursuant to a Hotel Master Lease. Also, because of the nature of the hotel business, it is possible that the Hotel Operator may from time-to-time engage the services of a Hotel Manager to actually perform the day-to-day operations of the Hotel Facility pursuant to a Hotel Management Agreement. This Agreement is intended to set forth the terms under which the Hotel Operator shall have the License to use the Reserved Parking Spaces.

AGREEMENTS

In consideration of the mutual promises and undertakings contained herein and in the Redevelopment Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties make the following grants and agreements:

Section 1 **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. Where a word or phrase is capitalized and not defined herein, the definition within the Redevelopment Agreement shall apply.

“Annual Verification of Hotel Facility Entities” has the meaning set forth in Section 4.4 hereof.

“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 of the Redevelopment Agreement; and (c) any 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.

“Director of TED” means the City of Naperville Director of Transportation, Engineering, and Development (or if there shall be no such Director, a representative selected by the City who is knowledgeable in transportation and parking matters and is otherwise qualified to address the topics covered by this Agreement).

“Extended Term” is defined in Section 2.2(c) hereof.

“**Extended Term Commencement Date**” means the first day of each Extended Term.

“**Extended Term License Fee**” means the annual fee payable by the Hotel Operator to the City during each Extended Term as established and adjusted pursuant to Section 2.5(c) hereof.

“**Hotel Facility**” has the meaning set forth in the Redevelopment Agreement.

“**Hotel Facility Entities**” means the Hotel Facility Owner, the Hotel Operator (if different from the Hotel Facility Owner), the Hotel Master Tenant (if applicable), and the Hotel Manager (if applicable).

“**Hotel Facility Opening Date**” means the date the Hotel Facility opens for business to the public, which date shall be confirmed by the Rebate Commencement Date Memorandum.

“**Hotel Facility Owner**” has the meaning set forth in the Redevelopment Agreement.

“**Hotel Facility Users**” means: (a) guests and patrons of the Hotel Facility (including overnight guests and patrons); and (b) vehicles parked by any valet operator which provides valet services to the Hotel Facility.

“**Hotel Flag**” has the meaning set forth in the Redevelopment Agreement.

“**Hotel Land**” has the meaning set forth in Recital A and which is depicted on **Exhibit B** hereto.

“**Hotel Management Agreement**” means an agreement between the Hotel Operator and a Hotel Manager for the management and operation of the Hotel Facility operating under a Hotel Flag that complies with the Redevelopment Agreement.

“**Hotel Manager**” is defined in Section 4.1(b) hereof.

“**Hotel Manager Notice**” means a notice in the form of **Exhibit F** hereto delivered by the Hotel Operator to the City to inform the City of the entry into a Hotel Management Agreement.

“**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 Lease Notice**” means a notice in the form of **Exhibit D** hereto delivered by the Hotel Facility Owner to the City to inform the City of the entry into a Hotel Master Lease.

“**Hotel Master Lease Termination Notice**” means a notice in the form of **Exhibit E** hereto delivered by the Hotel Facility Owner to the City to inform the City of the termination of a Hotel Master Lease.

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

“Hotel Operator” means the Hotel Facility Owner, provided, however, that the Hotel Facility Owner may designate in a Hotel Master Lease Notice that the Hotel Master Tenant shall become the Hotel Operator, in which event the Hotel Master Tenant shall become the Hotel Operator unless and until a Hotel Master Lease Termination Notice is delivered (in which event the Hotel Facility Owner shall thereupon become the Hotel Operator again).

“Initial Term” means that period of time equal to thirty (30) years beginning at 12:01 AM (Central Time) on the Hotel Facility Opening Date and ending at 11:59 PM (Central Time) on the day immediately preceding the thirtieth (30th) anniversary of the Hotel Facility Opening Date.

“Initial Term License Fee” means the annual fee payable by the Hotel Operator to the City during the Initial Term, which shall equal one thirtieth (1/30th) of the Parking Space Total Cost.

“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.

“License” is defined in Section 2.1(a) hereof.

“License Fee” means collectively: (a) the Initial Term License Fee payable during the Initial Term and (b) each Extended Term License Fee payable during each Extended Term.

“Market Rate” means the per space full-day, daily rate for publicly-owned parking spaces in the Naperville area at the time of each Reset Date.

“Other Water Street Users” means, collectively, (a) vehicles parked by any valet operator which provides valet services to any portion of the Water Street Project Property other than the Hotel Facility; and (b) vehicles parked by any occupant, user or owner of any portion of the Water Street Project Property other than the Hotel Facility.

“Parking Deck Land” has the meaning set forth in Recital D and which is depicted on **Exhibit B** hereto.

“Parking Space Total Cost” is defined in Section 2.5(b) hereof.

“Party” means individually, and **“Parties”** means collectively the City and the Hotel Operator (which is initially the Developer).

“Permitted Users” means: (a) the Hotel Facility Users; and (b) subject to Section 2.4(b) hereof, the Other Water Street Users.

“Quarter” or **“Quarterly”**: means each three (3) calendar month period ending on March 31st, June 30th, September 30th or December 31st.

“Rebate Agreement” means the Rebate Agreement between the City and the Developer related to the Developer Components, and approved by the City pursuant to 65 ILCS 5/8-11-20.

“Rebate Commencement Date Memorandum” means that certain Memorandum of Rebate Commencement Date, Hotel Facility Opening Date and Other Information Regarding Certain Water Street Agreements executed pursuant to the terms of the Rebate Agreement.

“Redevelopment Agreement”: means that certain Redevelopment Agreement entered into between the City and the Developer of even date herewith which is one of the Water Street Agreements and which applies to the development of the Water Street Project on the Water Street Project Property.

“Reserved Parking Spaces” means the one hundred twenty (120) parking spaces in the Parking Deck Improvements which are reserved for the exclusive use of the Hotel Operator pursuant to the terms of this Agreement.

“Reset Date” means: (a) the Extended Term Commencement Date; and (b) each of the 5th, 10th, 15th, 20th, and 25th anniversaries of the Extended Term Commencement Date.

“Retained Powers” means the rights and obligations under the following sections of this Agreement, which in all events shall be exercised or performed solely by the Hotel Facility Owner and shall never be exercised by a Hotel Master Tenant or a Hotel Manager: (a) recording of the Rebate Commencement Date Memorandum pursuant to Section 2.2(a) hereof; (b) extension of this Agreement after the fifth (5th) Extended Term pursuant to Section 2.2(c) hereof; (c) termination of this Agreement pursuant to Section 2.2(d) hereof; (d) recording of the memorandum of the Extended Term License Fee in accordance with Section 2.5(c)(ii) hereof; (e) the entry into a Hotel Master Lease pursuant to Section 4.1(a); and (f) the giving of Hotel Master Lease Notices and Hotel Master Lease Termination Notices pursuant to Section 4.2(a) hereof.

“Water Street Agreements” has the meaning set forth in the Redevelopment Agreement.

Section 2 **License Grant and Terms**

2.1 **Grant**

(a) **Grant of License.** Effective on the Hotel Facility Opening Date, the City grants to the Hotel Operator a license (“**License**”) to use the Reserved Parking Spaces for parking by the Permitted Users. In addition to the License to use the Reserved Parking Spaces, the Hotel Operator shall have the right, the same as all other public users of the Parking Deck Improvements, to utilize all other components (including the elevators, stairwells, entrance, exit and all drive aisles) of the Parking Deck Improvements in connection with the use of the License.

(b) **Effectiveness of License.** It is acknowledged by the Parties that this Agreement is being recorded prior to the Developer’s construction of the Parking Deck Improvements and prior to the conveyance of the Parking Deck Improvements from the Developer to the City. Notwithstanding the foregoing, the grant of the License herein by the City shall be deemed to be effective and fully enforceable on the Hotel Facility Opening Date. It is acknowledged and agreed that the Parking Deck Property shall be conveyed to the City subject in all events to the terms and conditions of the Water Street Agreements.

2.2 Term

(a) **Hotel Facility Opening Date.** The term of the License, and rights all obligations contained herein, shall commence on the Hotel Facility Opening Date. Upon the occurrence of the Hotel Facility Opening Date, a Rebate Commencement Date Memorandum shall be prepared, executed, and recorded in compliance with the provisions of Section 7.2.1 of the Rebate Agreement.

(b) **Initial Term.** The term of the License shall be the Initial Term, subject to extension as provided in Section 2.2(c) hereof.

(c) **Extended Term.** Subject to Section 2.2(d) hereof, the term of the License and this Agreement shall be automatically extended for two (2) successive periods of thirty (30) years each (each, an “**Extended Term**”) with the first Extended Term commencing immediately upon the expiration of the Initial Term (the “**First Extended Term**”) and the second Extended Term commencing upon the expiration of the First Extended Term (the “**Second Extended Term**”). The extension of the term of this License shall be automatic and without need for any notice or action whatsoever by the Parties. The extension of the License and this Agreement shall be on the same terms and conditions as existed as of the end of the Initial Term or the then ending Extended Term (as applicable), except that the License Fee during any Extended Term shall be calculated as set forth herein. After the end of the Second Extended Term, this Agreement may be extended only upon the mutual written agreement of the City and the Hotel Facility Owner, which agreement shall be recorded with the DuPage County Recorder against the Hotel Land and the Parking Deck Land.

(d) **Termination.** Notwithstanding anything to the contrary contained above:

- (1) the Hotel Facility Owner may terminate this Agreement as of the end of the Initial Term or as of the end of either Extended Term (as applicable) by giving written notice of said election to the City as provided in Section 5.5 hereof at least sixty (60) days prior to the expiration of the then current Initial Term or Extended Term (as applicable); and
- (2) the City may terminate this Agreement upon not less than thirty (30) days’ written notice to the Hotel Facility Owner and the Hotel Operator (if they are separate entities), as well as any Lender with respect to the Hotel Facility (including the Mortgage Lender and the Mezzanine Lender), in the event that:
 - (i) the Hotel Facility is operating for any use other than as a hotel pursuant to a Hotel Flag (it being acknowledged that an interruption in the operation of the Hotel Facility pursuant to Section 10.5 of the Redevelopment Agreement shall not give rise to a right to terminate this Agreement);
 - (ii) there is a violation of Section 10.4 of the Redevelopment Agreement; or

- (iii) this Agreement is Transferred or assigned in violation of the provisions of the Redevelopment Agreement, including but not limited to Section 11.12 thereof.

Notwithstanding the foregoing, upon notice of termination from the City, the Hotel Facility Owner and (if different) the Hotel Operator shall have sixty (60) days from receipt of notice of termination to Cure the violation which is the basis for said termination, so long as the City Manager is provided with written notice of such intent to Cure the applicable violation within thirty (30) days following receipt of the applicable notice of termination from the City. If the Hotel Facility Owner or (if different) the Hotel Operator fails to Cure such violation, a Curing Lender shall have the rights to effect a Cure pursuant to Article 18 of the Redevelopment Agreement before any such termination of this Agreement by the City shall become effective. Upon receipt of evidence that the violation has been cured to the City's satisfaction, the City shall provide a written retraction of the notice of termination to the Hotel Facility Owner, the Hotel Operator (if different from the Hotel Facility Owner) and the Lenders.

2.3 Designation of Reserved Parking Spaces.

(a) **Initial Plan.** Upon substantial completion of the Parking Deck Improvements and prior to the Hotel Facility Opening Date, the City shall provide the Hotel Operator with a draft of an initial plan for the location of the Reserved Parking Spaces (the "**Initial Reserved Parking Space Plan**") for the Hotel Operator's review and input. Upon receipt of the Hotel Operator's input with respect to the Initial Reserved Parking Space Plan and after consultation with the Hotel Operator regarding the Initial Reserved Parking Space Plan, the City shall finalize the Initial Reserved Parking Space Plan, which shall then be provided to the Hotel Operator and implemented for a one (1) year period commencing as of the Hotel Facility Opening Date. Said Initial Reserved Parking Space Plan shall address spaces required for parking in compliance with regulations under the Americans with Disability Act and other Laws. Notwithstanding the foregoing, it is the City's general intent, subject to input from the Hotel Operator and subject to limitations that may be revealed during construction of the Parking Deck Improvements, to provide Reserved Parking Spaces for the Initial Reserved Parking Space Plan in the following locations within the Parking Deck Improvements: (1) on the north side of the north aisle of the 2nd floor; (2) on the north side of the north aisle of the 3rd floor; (3) on the north side of the north aisle of the 4th floor; and (4) the balance on the north side of the north aisle of the 5th floor. Upon finalization of the Initial Reserved Parking Space Plan, the City shall promptly proceed with installation of signage pursuant to Section 2.3(d) hereof. Said signage may be covered by the City prior to the Hotel Facility Opening Date, so that the spaces may be used by the public until such time as they are needed by the Hotel Facility.

(b) **Revised Reserved Parking Space Plan.** After the first year's experience operating under the Initial Reserved Parking Space Plan, the City and the Hotel Operator shall meet and discuss options to improve selection of the Reserved Parking Spaces, if any improvement is reasonably needed. If changes are needed, the City shall draft revisions to the Initial Reserved Parking Space Plan with collaboration and input from the Hotel Operator. Upon receipt of the Hotel Operator's input and after consultation with the Hotel Operator regarding its input, the City shall finalize the changes necessary to the Initial Reserved Parking Space Plan in order to arrive at an established plan for the location of the Reserved Parking Spaces (the

“**Reserved Parking Space Plan**”). If no changes are needed to the Initial Reserved Parking Space Plan, the Initial Reserved Parking Space Plan shall be the Reserved Parking Space Plan for purposes of this Agreement, subject to future adjustment as provided in this Section 2.3(c) hereof.

(c) **Additional Changes to Reserved Parking Space Plan.** Once determined pursuant to the process outlined in Section 2.3(b) hereof, the Reserved Parking Space Plan shall remain in effect until and unless any material operational issues in the Parking Deck Improvements cause the City to reasonably determine that some of the Reserved Parking Spaces should be relocated to another portion of the Parking Deck Improvements. In such event, the City shall: (i) give not less than sixty (60) days’ notice to the Hotel Operator; (ii) identify in writing the material operational issues in question; (iii) obtain input and reasonably cooperate with the Hotel Operator regarding the Hotel Operator’s preferences with respect to the new location of the Reserved Parking Spaces to be relocated; and (iv) provide replacement signage as provided in Section 2.3(d) hereof.

(d) **Signage.** At all times, the City (at its expense) shall provide signage within the Parking Deck Improvements designating which parking spaces are the Reserved Parking Spaces established pursuant to this Agreement. In the event the Reserved Parking Spaces are relocated pursuant to Section 2.3(c) hereof, the City agrees to provide comparable replacement signage such that the relocated Reserved Parking Spaces are clearly denoted as such.

2.4 Use of Reserved Parking Spaces.

(a) **Permitted Users.** The Reserved Parking Spaces shall be used by the Permitted Users. The Reserved Parking Spaces may be used for overnight parking for the Permitted Users. No ordinance, resolution, policy or rule of the City shall limit or terminate such overnight parking right with respect to the Reserved Parking Spaces. In the Hotel Operator’s discretion, each automobile using a Reserved Parking Space may be required to display some form of identification indicating that it is occupied by a Permitted User; provided that the City must approve any form of identification required by the Hotel Operator to be placed in or on vehicles using the Reserved Parking Spaces (such approval not to be unreasonably withheld).

(b) **Use by Other Water Street Users.** If and to the extent the Hotel Facility shall not require the use of the Reserved Parking Spaces on any given day, then the Reserved Parking Space may be utilized by any Other Water Street Users, provided that the decision to allow such use shall be made in the sole discretion of the Hotel Operator. Coordination of the use of Reserved Parking Spaces by the Other Water Street Users shall be made by the Hotel Operator or (if applicable) the Hotel Manager.

(c) **Regulation.** The Hotel Operator (or the Hotel Manager, or the Hotel Master Tenant, if applicable) shall be solely responsible for regulating the use of Reserved Parking Spaces. In that regard, to the extent logistically possible without unreasonable risk of damage to persons or property, the Hotel Operator may (at its expense) engage a reputable, insured towing service for the purpose of removing vehicles that are using the Reserved Parking Spaces but that are not Permitted Users or Other Water Street Users permitted to use the Reserved Parking Spaces pursuant to the terms of clause (b) of this Section 2.4 hereof; provided that: (i) such

towing services removes all vehicles in compliance with all applicable Laws; (ii) the City is a named insured on all insurance provided by such towing service in a form and amount agreed to by the City and (iii) all activities of the towing service engaged by the Hotel Operator shall be subject to the defense and indemnification provisions set forth in Section 5.15 hereof.

(d) **Annual Meeting**. At least once annually during the Term, the Hotel Operator and the Director of TED shall meet to review the use of the Reserved Parking Spaces and to explore any options which may be reasonably available to maximize the use and efficiency of the Reserved Parking Spaces.

2.5 **License Fee.**

(a) **License Fee**. In consideration for the granting of the License, the Hotel Operator shall pay the City the applicable License Fee each year as provided herein. The License Fee shall be paid in Quarterly installments. The first Quarterly installment will be due on the last day of the first Quarter occurring after the Hotel Facility Opening Date and the Hotel Facility Opening Date shall be set forth in the Rebate Commencement Date Memorandum.

(b) **Initial Term License Fee**. The Initial Term License Fee shall be calculated based on an amount (the “**Parking Space Total Cost**”) equal to the sum of: (i) the actual final design and construction costs associated with the construction of the Reserved Parking Spaces (the “**Parking Space Construction Costs**”); plus (ii) the interest at the actual rate accruing on the Taxable Bonds issued by the City to pay for the Parking Space Construction Costs. The City and the Hotel Operator shall cooperate in good faith to establish the Parking Space Construction Costs. The Rebate Commencement Date Memorandum shall set forth the amount of the Initial Term License Fee.

(c) **Extended Term License Fee**. The License Fee for each year of an Extended Term (the “**Extended Term License Fee**”) shall be calculated and recalculated pursuant to the terms of this subsection (c):

- (i) Within ninety (90) days prior to each Reset Date, the Hotel Operator and the Director of TED shall meet in order to establish the Market Rate based upon the data compiled by the City as to the daily fee charged for publicly-owned parking spaces in the Naperville area which will be in effect at the time of the commencement of the Extended Term.
- (ii) Once the Market Rate is established for each Reset Date, then the Extended Term License Fee shall equal an amount calculated as follows: (x) the Market Rate shall be multiplied by 365 to arrive at the annual rate for each of the Reserved Parking Spaces (the “**Annual Rate**”); and (y) such Annual Rate shall be multiplied by 120 to arrive at the Extended Term License Fee. By way of example only, if the Market Rate is \$2, then the Annual Rate shall be \$730 per space and the Extended Term License Fee shall be \$87,600 (\$730 x 120) per year until the next Reset Date. Upon determination of the Extended Term License Fee pursuant to this Section 2.5(c) hereof, the Hotel Facility Owner shall prepare and the City

and the Hotel Facility Owner shall execute a memorandum setting forth such Extended Term License Fee and a copy of such memorandum shall be recorded by the Hotel Facility Owner with the DuPage County Recorder against the Parking Deck Land and the Hotel Land, and a copy of the recorded memorandum shall be promptly provided to the City in compliance with the notice provisions set forth in Section 5.5 hereof.

- (iii) For purposes of clarity, once the Extended Term License Fee is established as of each Reset Date, the Extended Term License Fee shall be fixed at such annual amount for the five year period commencing on the applicable Reset Date and ending on the next occurring Reset Date (at which time the Extended Term License Fee shall be re-calculated pursuant to this Section 2.5(c)).

(d) **Letter of Credit to Guarantee Payment of License Fee.** In order to guarantee payment of the Initial Term License Fee during the Initial Term of this Agreement, the Hotel Operator shall provide the City with a letter of credit (the “**Parking LOC**”) as financial surety, in a form approved by the City, such approval not to be unreasonably withheld. The Parking LOC shall be delivered prior to the Hotel Facility Opening Date. The amount of the Parking LOC shall be subject to annual agreement by the City and the Hotel Operator (the “**Parking LOC Amount**”), but in no event shall the Parking LOC Amount exceed the Initial Term License Fee amount. In the event that any sum is drawn upon the Parking LOC pursuant to Section 2.5(e) hereof, then within thirty (30) days after the City notifies the Hotel Operator of such a draw, the Hotel Operator shall deliver a new Parking LOC (or an amendment to the existing Parking LOC) such that the City is in possession of a Parking LOC for the full Parking LOC Amount then in effect.

(e) **Special Remedies for Failure to Pay License Fee.** Subject to the terms of Section 5.3 hereof, if the License Fee is not paid to the City by the Hotel Operator as required under this Agreement (a “**License Fee Default**”), the City shall provide written notice to Hotel Operator, Mortgage Lender and Mezzanine Lender of such License Fee Default. If the Hotel Operator and/or Mortgage Lender and/or Mezzanine Lender fail to cure the License Fee Default by paying the delinquent License Fee within fifteen (15) days after this written notice from the City, then:

- (i) the City may draw upon the Parking LOC in order to pay such delinquent License Fee; and/or
- (i) the City may offset against amounts due from the City pursuant to the Rebate Agreement in order to pay such delinquent License Fee;
- (iii) if the amounts received by the City pursuant to the preceding clause (i) and (ii) are not sufficient to pay the delinquent License Fee, then some or all of the Reserved Parking Spaces may be converted to public parking spaces at the City’s discretion and upon written notice to the Hotel Operator, Mortgage Lender and Mezzanine Lender.

If Reserved Parking Spaces are converted to public spaces pursuant to Section 2.5(e)(iii) hereof, any such converted spaces shall be converted back to Reserved Parking Spaces upon full payment of any delinquent License Fee owed to the City, plus interest as provided herein. Further, for purposes of clarity: (x) if the delinquent sums are paid from a draw on the Parking LOC pursuant to Section 2.5(e)(i) hereof, then the City may not also offset payments due under the Rebate Agreement pursuant to Section 2.5(e)(ii) hereof on account of such same delinquent installment of the License Fee; and (y) with respect to the obligation to pay the License Fee, the required notice of a License Fee Default and the opportunity to cure a License Fee Default provided for in this Section 2.5(e) shall govern over all other provisions of the Redevelopment Agreement relating to Notices of Default and Cure Periods.

(f) **Other Defaults.** Except as provided in Section 2.5(e) above with respect to License Fee Defaults, an Event of Default (as such term is defined in the Redevelopment Agreement) by the Hotel Operator which is not Cured in accordance with the Redevelopment Agreement shall constitute an Event of Default by the Hotel Operator under this Agreement. For purposes of clarity, except as provided in Section 2.5(e) above with respect to License Fee Defaults, any failure by the Hotel Operator to perform any obligation under this Agreement shall be subject to the requirements of the Redevelopment Agreement relating to the giving of a Notice of Default and the ability of the Developer or any Curing Lender (as defined in the Redevelopment Agreement) to effectuate a Cure thereof prior to the expiration of all applicable Cure Periods. In addition to the remedies set forth in Section 2.5(e) hereof, if: (i) the Hotel Operator does not Cure the Event of Default pursuant to the terms hereof, and (ii) a Curing Lender does not subsequently effect a Cure of the applicable Event of Default, then an Uncured Default shall have occurred, entitling the City to exercise its remedies under the Water Street Agreements.

Section 3 City Obligation to Maintain the Parking Deck Improvements

3.1 Obligation and Access. The City agrees to maintain the Reserved Parking Spaces in good condition and repair, to clear debris, and to perform necessary snow removal, all consistently with the standard of care it uses for parking facilities in the downtown area of Naperville and consistently with the standard of care employed with respect to other spaces within the Parking Deck Improvements. The City shall have full access to the Reserved Parking Spaces for the purpose of conducting maintenance, repair, surfacing, striping and other customary activities associated with parking deck facilities.

3.2 City Rights to Temporarily Terminate/Relocate.

(a) **Temporary Closure.** The City may temporarily close the Parking Deck Improvements and/or obstruct access to the Reserved Parking Spaces as necessary to perform the activities described in Section 3.1 hereof and to respond to emergencies. Except in the case of emergencies, the City shall provide at least five (5) days' advance notice to the Hotel Operator of activities which will interfere with the use of the Reserved Parking Spaces. During any such interruption of the use of any portion of the Reserved Parking Spaces: (i) if such is expected to last seven (7) days or less, the Hotel Operator and the City shall reasonably cooperate with each other to determine if other portions of the Parking Deck Improvements are needed by Hotel Operator and can be utilized by Hotel Operator during such period; and (ii) if such is expected to last more than seven (7) days, the same number of spaces as are rendered unusable shall be

provided to the Hotel Operator in another reasonably located portion of the Parking Deck Improvements and identified by the City as Reserved Parking Spaces for use by the Permitted Users subject to the terms of this License.

(b) **Closure of Entire Deck.** In the event that City reasonably determines it is necessary to close the entire Parking Deck Improvements, then (except in the case of an emergency) prior to doing so, the City and the Hotel Operator shall determine a means, to the extent feasible, for providing the Hotel Facility with 120 parking spaces at a substitute location acceptable to the Hotel Operator and the City prior to closing the Parking Deck Improvements. In the event such substitute parking shall result in any cost to the Hotel Operator, the City Manager and the Hotel Operator shall agree in writing upon an amount to be deducted from the License Fee due hereunder.

Section 4 Hotel Master Tenants and Hotel Managers

4.1 Statement of Purpose of this Section 4. In the course of owning and operating the Hotel Facility, it may be necessary for the Hotel Facility Owner to institute one or more of the following:

(a) **Hotel Master Lease.** The Hotel Facility Owner may determine that it is in the best interest of the Hotel Facility Owner to enter into a Hotel Master Lease with a Hotel Master Tenant. As of the Effective Date, the Developer (as the Hotel Facility Owner) represents that there is no Hotel Master Lease in effect.

(b) **Hotel Management Agreement.** The Hotel Facility Owner or (if a Hotel Master Lease is in place) a Hotel Master Tenant may engage the services of a management company (the “**Hotel Manager**”) to operate the Hotel Facility under a Hotel Flag that complies with the terms of the Redevelopment Agreement. As of the Effective Date, it is acknowledged by the City that the Developer (as the Hotel Facility Owner) has engaged IHG Management (Maryland), LLC (“**IHG**”), a Maryland limited liability company, as the Hotel Manager under a management agreement pursuant to which IHG, as the Hotel Manager, will operate the Hotel Indigo as the Hotel Flag for the Hotel Facility. Any changes in the Hotel Flag after the date hereof shall be subject to the requirements of the Redevelopment Agreement.

This Section 4 is intended to identify certain rights and obligations of Hotel Managers and Hotel Master Tenants with respect to this Agreement.

4.2 Hotel Master Leases.

(a) **Hotel Master Lease Notice.** In the event that the Hotel Facility Owner enters into a Hotel Master Lease, then the Hotel Facility Owner shall deliver to the City the Hotel Master Lease Notice promptly after executing the Hotel Master Lease. The Hotel Master Lease Notice shall be accompanied by a copy of the Hotel Master Lease (provided, however, disclosure of the Hotel Master Lease shall be subject to the terms of Section 21.19 of the Redevelopment Agreement). In all events, the Hotel Master Tenant must be an affiliate of the Hotel Facility Owner, unless otherwise approved by the City Manager at his or her discretion. In the event that that a Hotel Master Lease shall terminate for any reason, then the Hotel Facility Owner shall

deliver to the City the Hotel Master Lease Termination Notice promptly after such termination occurs.

(b) **Designation of Hotel Master Tenant as Hotel Operator.** It shall be within the discretion of the Hotel Facility Owner as to whether the Hotel Master Tenant will become the Hotel Operator during the term of the Hotel Master Lease. If the Hotel Master Lease Notice does not specify that the applicable Hotel Master Tenant will be assuming the obligations of the Hotel Operator hereunder, then the Hotel Facility Owner shall remain the Hotel Operator for purposes of this Agreement. In the event that the Hotel Facility Owner desires to appoint the Hotel Master Tenant as the Hotel Operator for purposes of this Agreement: (i) the Hotel Facility Owner shall specifically provide for appointment in the Hotel Master Lease Notice; and (ii) Hotel Facility Owner and Hotel Master Tenant shall execute and record an assignment and assumption agreement in the form of **Exhibit H** hereto (a “**Hotel Master Tenant Assumption**”), a recorded copy of which shall be delivered to the City along with the Hotel Master Lease Notice. In any event, the Retained Powers shall remain solely vested with the Hotel Facility Owner, even if the Hotel Master Tenant is made the Hotel Operator pursuant to a Hotel Master Lease Notice. In the event that that a Hotel Master Lease shall terminate for any reason after recording a Hotel Master Tenant Assumption, then the Hotel Facility Owner and Hotel Master Tenant shall execute and record an re-assignment and re-assumption agreement in the form of **Exhibit I** hereto promptly after such termination occurs (a “**Hotel Facility Owner Re-assumption**”), a recorded copy of which shall be delivered to the City along with the Hotel Master Lease Termination Notice.

(c) **Effect of Designation.** If the Hotel Master Tenant is made the Hotel Operator pursuant to a Hotel Master Lease Notice and Hotel Master Tenant Assumption, then: (i) the Hotel Facility Owner shall cease to be the Hotel Operator until the delivery of a Hotel Master Lease Termination Notice and the recordation of a Hotel Facility Owner Re-assumption; and (ii) the Hotel Master Tenant shall be: (A) entitled to all of the rights and benefits of the this Agreement as Hotel Operator (other than the Retained Powers) and (B) be obligated to perform all obligations of the Hotel Operator set forth herein (other than the Retained Powers).

(d) **Default by Hotel Master Tenant.** In the event the Hotel Master Tenant shall default on its obligations as Hotel Operator while it is acting as Hotel Operator under this Agreement, such default shall be binding upon the Hotel Facility Owner (including in the event a Hotel Master Lease Termination Notice is ultimately delivered) and the Hotel Facility Owner shall not be relieved of any liability under this Agreement on account of such default. Further, in the event the Hotel Facility Owner shall default in the performance of any term or provision of this Agreement while a Hotel Master Tenant is the Hotel Operator, such default shall be binding upon the Hotel Master Tenant. Finally, with respect to any Retained Powers, the Hotel Facility Operator’s exercise of the Retained Powers shall be binding upon the Hotel Master Tenant and the City shall not be obligated to inform the Hotel Master Tenant of the exercise of any Retained Powers by the Hotel Facility Owner.

4.3 Hotel Managers.

(a) **Hotel Management Notice.** In the event that the Hotel Operator enters into a Hotel Management Agreement, then the Hotel Operator shall deliver to the City the Hotel

Management Notice promptly after executing the Hotel Management Agreement. The Hotel Management Notice shall be accompanied by a copy of the Hotel Management Agreement (provided, however, disclosure of the Hotel Management Agreement shall be subject to the terms of Section 21.19 of the Redevelopment Agreement). In the event that that a Hotel Management Agreement shall terminate for any reason, then the Hotel Operator shall notify the City of such termination promptly after its occurrence, and the Hotel Operator shall give the City a subsequent Hotel Management Notice if another Hotel Management Agreement is entered into by the Hotel Operator.

(b) **Hotel Manager Use of Reserved Parking Spaces.** Subject to the terms of this Agreement, the Hotel Manager may utilize the Reserved Parking Spaces for the operation of the Hotel Facility to the same extent as the Hotel Operator. In the event that the Hotel Manager utilizes the Reserved Parking Spaces: (i) the performance of any obligation of the Hotel Operator hereunder by the Hotel Manager in accordance with this Agreement (including the payment of the License Fee when due) shall be deemed to be performance by the Hotel Operator hereunder; and (ii) any violation of the terms of this Agreement by the Hotel Manager which would be a violation by the Hotel Operator hereunder shall be deemed to be a default by the Hotel Operator.

(c) **Hotel Manager Not a Hotel Operator.** In the event the Hotel Operator enters into a Hotel Management Agreement, the Hotel Manager shall in no event ever become the Hotel Operator for purposes of this Agreement. Rather, the Hotel Manager's rights shall be limited to the use of the Reserved Parking Spaces pursuant to the terms hereof in the operation of the Hotel Facility. In all events the Hotel Operator shall remain fully liable for the obligations of this Agreement.

4.4 **Annual Verification of Hotel Facility Entities.** At each Annual Meeting held pursuant to Section 2.4(d) hereof, the City shall be provided with written confirmation specifying the name, address, telephone number and email address of each of the Hotel Facility Entities to the extent that the same exists (an "**Annual Verification of Hotel Facility Entities**"). If requested by the City, copies of current Hotel Master Lease (if applicable) and Hotel Management Agreement (if applicable) shall be provided to the City.

Section 5 **Miscellaneous Provisions**

5.1 **Enforcement.** In addition to the rights specified in Section 2.5 hereof, the City and the Hotel Operator shall have the right to enforce this Agreement as provided herein and by an action at law or in equity. However, if the default of the City does not result in the interruption of the use of Reserved Parking Spaces by the Permitted Users, then the Hotel Operator shall provide notice of such default to the City and the City shall have a reasonable time (not to exceed sixty days) to cure the applicable default prior to the Hotel Operator initiating any remedy with respect to enforcement of this Agreement.

5.2 **Recording.** This Agreement shall be recorded in the public records of DuPage County, Illinois to evidence the agreements made hereunder, which agreements shall run with and bind the Hotel Land and the Parking Deck Land, subject to the terms hereof.

5.3 Remedies. The various rights and remedies herein contained and reserved hereunder shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or failure to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therewith. Notwithstanding anything to the contrary contained herein, the License and this Agreement are not terminable by the City on account of any default or violation of this Agreement or the Water Street Agreements, subject (however) to the City's rights under Section 2.2(d) and 2.5(e)(ii) hereof.

5.4 Successors. All provisions of this Agreement, including the benefits and burdens, are binding on, and inure to the heirs, assigns, and successors of the Parties hereto. In addition to the provisions of Section 4.2 hereof, this Agreement may be assigned by the Hotel Facility Owner to any successor Hotel Facility Owner in accordance with the terms of the Redevelopment Agreement and such assignment shall be deemed to have occurred upon the recordation of an assignment and assumption agreement in the form of **Exhibit G** hereto, a recorded copy of which shall be delivered to the City. This Agreement may also be collaterally assigned by the Hotel Facility Owner to: (a) the Mortgage Lender pursuant to the Permitted Mortgage; and (b) any Future Lender pursuant to any Future Mortgage, each in accordance with the terms of the Redevelopment Agreement.

5.5 Notices

Section 5.5.1 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

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

and

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

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.

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

Section 5.5.2 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 Section is presumed to have been validly given.

Section 5.5.3 Future Lenders. In the event the City is notified in accordance with the Redevelopment Agreement of the existence of a Replacement Mortgage Lender or a Future

Lender with respect to the Hotel Land, then notices required to be delivered to the Mortgage Lender hereunder shall likewise be given to any such Replacement Mortgage Lender or Future Lender.

5.6 Inconsistent Provisions. In the event of a conflict between this Agreement and the Redevelopment Agreement, this Agreement shall control.

5.7 Other Amounts. Other than the License Fee, and except as otherwise provided herein, the Hotel Operator shall not be obligated to pay any other amounts to the City for the use of the License conveyed hereby. Notwithstanding the foregoing, if and to the extent the Reserved Parking Spaces are determined not to be exempt from real estate taxes (which exemption the Parties expect to apply to the Reserved Parking Spaces), then the Hotel Operator and (if different) the Hotel Facility Owner shall be jointly and severally responsible to pay any and all real property taxes assessed with respect to the Reserved Parking Spaces on or before the dates on which such taxes are due. In the event of failure by the Hotel Operator and (if different) the Hotel Facility Owner to timely pay such taxes, if any, the City may (but shall not be obligated to) pay said taxes and/or to take any legal action it determines appropriate to recoup such payment, plus interest, including but not limited to offsetting the amount of such taxes actually paid by the City against payments due under the Rebate Agreement. Failure to timely pay taxes, plus interest as provided herein, is not subject to any cure period other than as specifically provided in this Section 5.7 hereof. However, if the City opts to offset against Rebate Payments the amount of such taxes actually paid by the City, the City shall comply with the Cure provisions set forth or referenced in the Rebate Agreement. Interest on such payments shall continue to accrue during any applicable Cure Period.

5.8 Recitals Incorporated. The Recitals to this Agreement are a material part hereof and are incorporated into this Agreement by this reference.

5.9 Choice of Law. This Agreement shall be construed and enforced 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.

5.10 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.

5.11 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.

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

5.13 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) Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) When the words “day” or “days” are used herein, calendar days are intended unless working days are specified.
- (f) No cure periods are intended except those specified or referenced herein.

5.14 Interest. 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. Interest on any such past-due payment shall continue to accrue during any applicable cure period.

5.15 Defense, Indemnification, Hold Harmless. The Hotel Operator and (if different) the Hotel Facility Owner agree to defend, indemnify, and hold the City and its officers, agents, and employees (“**Indemnified Parties**”) harmless from and against any claims, losses, actions or damages arising out of this Agreement (“**Claims**”), including but not limited to the use of the Reserved Parking Spaces by any of the Hotel Facility Entities, except to the extent such Claims are caused by the Indemnified Parties’ willful misconduct.

5.16 Survival. The obligation to pay any License Fees owed hereunder as of the date of expiration or earlier termination of this Agreement, and the provisions of Section 2.5(d), 2.5(e) and 2.5(f) hereof and all of Section 5 hereof shall survive the expiration or termination of this Agreement.

[remainder of page intentionally left blank]

[signatures on following pages]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of _____, 2015.

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

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

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

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

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
My Commission Expires: _____

EXHIBIT A
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 B
DEPICTION OF WATER STREET PROJECT PROPERTY**

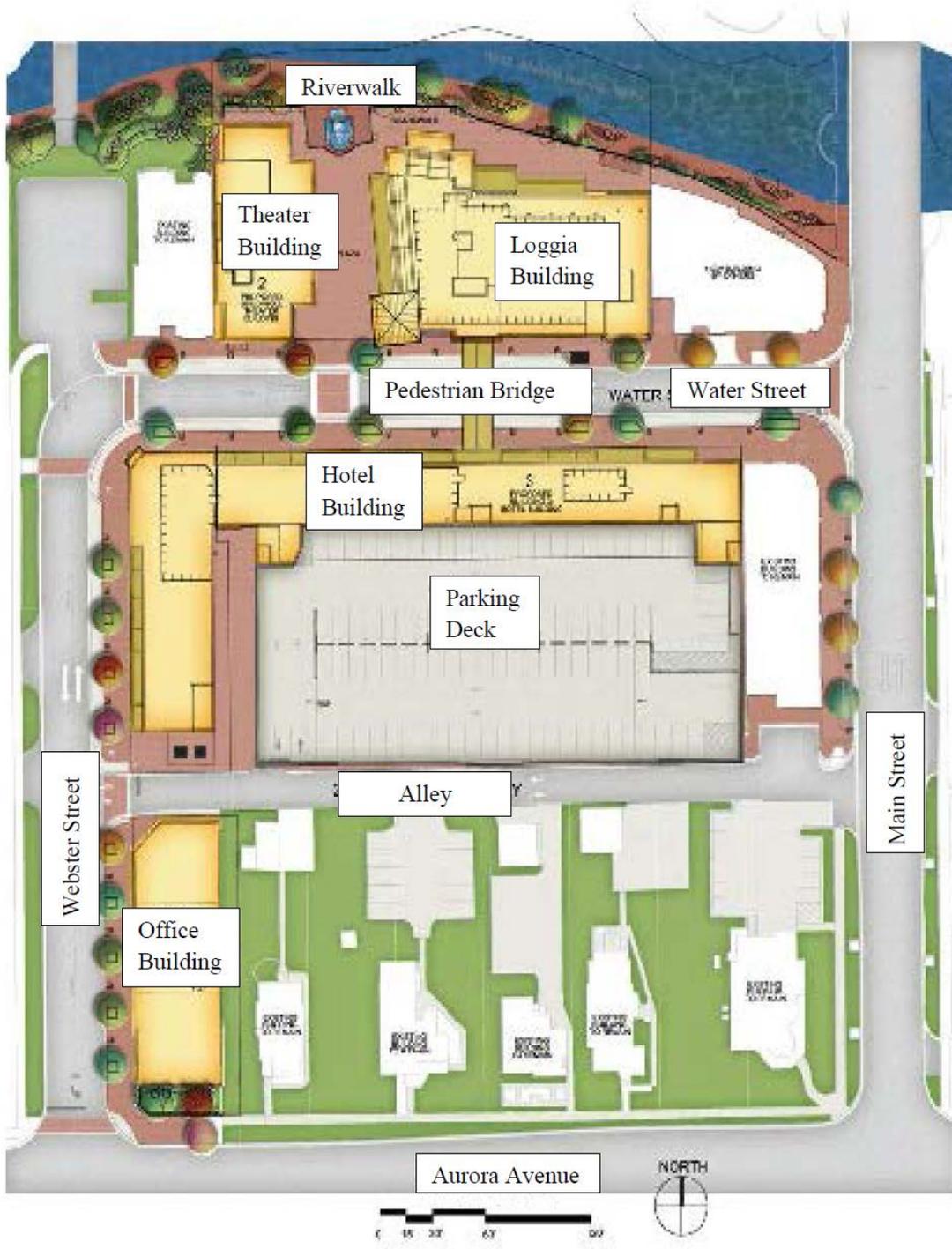


EXHIBIT C
LEGAL DESCRIPTION OF PARKING DECK LAND

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 D
HOTEL MASTER LEASE NOTICE

VIA [SPECIFY MANNER OF SERVICE]

[Address and send to all required City notice persons pursuant to Section 5.5.1]

Re: Water Street Parking Facility License Agreement dated _____, 2015 (the “Parking Facility License Agreement”) by and between Water Street Property Owner, LLC, a Delaware limited liability company (“Developer”) and the City of Naperville, an Illinois municipal corporation and home rule unit (“City”). All capitalized terms used herein, but not defined herein, shall have those meanings given to such terms in the Parking Facility License Agreement.

Ladies and Gentlemen:

This notice shall serve as the Hotel Master Lease Notice pursuant to the terms of the Parking Facility License Agreement. The undersigned, as the Hotel Facility Owner as of the date hereof, hereby gives notice to the City that it has entered into a Hotel Master Lease for the Hotel Facility. The name of the Hotel Master Tenant is _____. The address for the Hotel Master Tenant is _____. A copy of the Hotel Master Lease is enclosed for your reference. Please note that disclosure of the enclosed Hotel Master Lease is subject to Section 22.10 of the Redevelopment Agreement.

[INCLUDE APPLICABLE PROVISION – CHOOSE ONLY OPTION 1 OR OPTION 2:

OPTION 1 --Pursuant to Section 4.2(b) of the Parking Facility License Agreement, the Hotel Facility Owner hereby appoints the Hotel Master Tenant as the Hotel Operator. Enclosed is a copy of the recorded Hotel Master Tenant Assumption required pursuant to Section 4.2(b) of the Parking Facility License Agreement. As such, you are hereby directed to deal with the Hotel Master Tenant as the Hotel Operator from and after the date hereof for all purposes under the Parking License Agreement (except with respect to the Retained Powers which shall remain vested in the Hotel Facility Owner). This appointment shall be valid until a Master Lease Termination Notice and a Hotel Facility Owner Re-assumption is delivered to the City pursuant to the Parking Facility License Agreement. ---- OR

OPTION 2 -- Pursuant to the terms of Section 4.2(b) of the Parking Facility License Agreement, the Hotel Facility Owner remains the Hotel Operator and has not appointed the Hotel Master Tenant as such. As such, you are hereby directed to continue to deal with the Hotel Facility Owner as the Hotel Operator until further notice is received from the undersigned.]

Thank you for your cooperation. Should you have any questions, please contact the undersigned at _____.

[signatures follow on next page]

[INSERT SIGNATURE OF CURRENT HOTEL FACILITY OWNER]

EXHIBIT E
HOTEL MASTER LEASE TERMINATION NOTICE

VIA [SPECIFY MANNER OF SERVICE]

[Address and send to all required City notice persons pursuant to Section 5.5.1]

Re: Water Street Parking Facility License Agreement dated _____, 2015 (the “Parking Facility License Agreement”) by and between Water Street Property Owner, LLC, a Delaware limited liability company (“Developer”) and the City of Naperville, an Illinois municipal corporation and home rule unit (“City”). All capitalized terms used herein, but not defined herein, shall have those meanings given to such terms in the Parking Facility License Agreement.

Ladies and Gentlemen:

This notice shall serve as the Hotel Master Lease Termination Notice pursuant to the terms of the Parking Facility License Agreement. The undersigned, as the Hotel Facility Owner as of the date hereof, hereby gives notice to the City that the Hotel Master Lease with _____ as the Hotel Master Tenant has been terminated effective as of _____, 20 ____.

[INCLUDE APPLICABLE PROVISION – CHOOSE ONLY OPTION 1 OR OPTION 2

OPTION 1: The undersigned hereby further informs you that there is no Hotel Master Lease now in effect with respect to the Hotel Facility and, as such, the undersigned Hotel Facility Owner has re-assumed the role of Hotel Operator under the Parking Facility License Agreement. Enclosed is a copy of the recorded Hotel Facility Owner Re-assumption required pursuant to Section 4.2(b) of the Parking Facility License Agreement. --- OR

OPTION 2: Enclosed is a new Hotel Master Lease Notice disclosing the existence of a new Hotel Master Lease with a new Hotel Master Tenant and the terms of the enclosed Hotel Master Lease Notice shall govern.]

Thank you for your cooperation. Should you have any questions, please contact the undersigned at _____.

[signatures follow on next page]

[INSERT SIGNATURE OF CURRENT HOTEL FACILITY OWNER]

**EXHIBIT F
HOTEL MANAGER NOTICE**

VIA [SPECIFY MANNER OF SERVICE]

[Address and send to all required City notice persons pursuant to Section 5.5.1]

Re: Water Street Parking Facility License Agreement dated _____, 2015 (the “Parking Facility License Agreement”) by and between Water Street Property Owner, LLC, a Delaware limited liability company (“Developer”) and the City of Naperville, an Illinois municipal corporation and home rule unit (“City”). All capitalized terms used herein, but not defined herein, shall have those meanings given to such terms in the Parking Facility License Agreement.

Ladies and Gentlemen:

This notice shall serve as the Hotel Manager Notice pursuant to the terms of the Parking Facility License Agreement. The undersigned, as the Hotel Operator as of the date hereof, hereby gives notice to the City that it has entered into a Hotel Management Agreement for the Hotel Facility. The name of the Hotel Manager is _____. The address for the Hotel Manager is _____. A copy of the Hotel Management Agreement is enclosed for your reference. Please note that disclosure of the enclosed Hotel Management Agreement is subject to Section 22.10 of the Redevelopment Agreement.

Thank you for your cooperation. Should you have any questions, please contact the undersigned at _____.

[signatures follow on next page]

[INSERT SIGNATURE OF CURRENT HOTEL FACILITY OWNER]

**EXHIBIT G
ASSIGNMENT AND ASSUMPTION**

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 OF
PARKING FACILITY LICENSE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PARKING FACILITY LICENSE 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 Parking Facility License Agreement dated _____ (as amended, the "**Parking Facility License Agreement**") with the City of Naperville, Illinois, an Illinois municipal home rule corporation (the "**City**") which Parking Facility License Agreement was recorded in the records of DuPage County on _____ as document number _____. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Parking Facility License Agreement.

[NOTE TO PREPARER: INCLUDE NEXT RECITAL IF THERE HAVE BEEN ANY ASSIGNMENTS BY THE DEVELOPER WHICH HAVE OCCURRED PRIOR TO THE EXECUTION OF THIS AGREEMENT]

B. Pursuant to an Assignment and Assumption Agreement dated _____ between _____ and Assignor which was recorded on _____ as

document number _____, Assignor became the Hotel Facility Owner under the Parking Facility License Agreement and was assigned the Hotel Facility Owner's interest in the Parking Facility License Agreement and (in turn) Assignor assumed all of the obligations of the Hotel Facility Owner under the Parking Facility License Agreement.

[B/C]. Assignor desires to now transfer its interest in the Hotel Land identified on Exhibit A hereto (the "**Hotel Land**") to Assignee concurrently with execution of this Agreement and Assignor desires to so acquire the Hotel Land from the Assignor.

[C/D]. The Parking Facility License Agreement provides that the Hotel Facility Owner may assign its rights and obligations under the Parking Facility License Agreement to another party, provided that the assigning Hotel Facility Owner shall require the Assignee to execute this Agreement and that this Agreement shall be recorded against the Hotel Land.

[D/E]. Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Parking Facility License Agreement.

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 the Hotel Facility Owner's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Parking Facility License Agreement (collectively, "**Rights and Obligations**").

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, whether accruing before or on or after the Effective Date (as defined in Section 13) as such relate to the Hotel Land. Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of the Hotel Facility Owner arising from or under the Parking Facility License Agreement.

3. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Parking Facility License Agreement. Whenever the term "Hotel Facility Owner" appears in the Parking Facility License Agreement, it shall hereafter mean Assignee.

4. Parking Facility License 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 Parking Facility License Agreement are hereby ratified and shall remain in full force and effect.

5. Recording. Assignor shall cause this Agreement to be recorded with the DuPage County Recorder, and shall promptly provide conformed copies of the recorded Agreement to Assignee and City.

6. Successors and Assigns. Subject to the restrictions on transfer set forth in the Parking Facility License 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 Parking Facility License 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 Hotel Land ("**Effective Date**").

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

[INSERT SIGNATURE PAGES, NOTARY BLOCKS AND
EXHIBIT A WHICH DESCRIBES THE TRANSFERRED PROPERTY]

EXHIBIT H
HOTEL MASTER TENANT ASSUMPTION

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)

HOTEL MASTER TENANT ASSUMPTION

THIS HOTEL MASTER TENANT ASSUMPTION ("**Agreement**") is entered into as of the _____ day of _____, 20____, by and among _____ ("**Hotel Facility Owner**"), and _____ ("**Hotel Master Tenant**").

RECITALS

A. Water Street Property Owner, LLC, a Delaware limited liability company (the "**Developer**"), has entered into that certain Water Street Parking Facility License Agreement dated _____ (as amended, the "**Parking Facility License Agreement**") with the City of Naperville, Illinois, an Illinois municipal home rule corporation (the "**City**") which Parking Facility License Agreement was recorded in the records of DuPage County on _____ as document number _____. The Parking Facility License Agreement encumbers the Hotel Land identified on Exhibit A hereto (the "**Hotel Land**"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Parking Facility License Agreement.

[NOTE TO PREPARER: INCLUDE NEXT RECITAL IF THERE HAVE BEEN ANY ASSIGNMENTS BY THE DEVELOPER WHICH HAVE OCCURRED PRIOR TO THE EXECUTION OF THIS AGREEMENT]

B. Pursuant to an Assignment and Assumption Agreement dated _____ between _____ and Hotel Facility Owner which was recorded on _____

_____ as document number _____, Hotel Facility Owner became the Hotel Facility Owner under the Parking Facility License Agreement and was assigned the Hotel Facility Owner's interest in the Parking Facility License Agreement and (in turn) Hotel Facility Owner assumed all of the obligations of the Hotel Facility Owner under the Parking Facility License Agreement.

[B/C]. Hotel Facility Owner and Hotel Master Tenant have entered into a Hotel Master Lease for the Hotel Facility.

[C/D]]. The Parking Facility License Agreement provides that the Hotel Facility Owner may designate a Hotel Master Tenant to become the Hotel Operator under the Parking Facility License Agreement, provided that the Hotel Master Tenant and Hotel Facility Owner execute this Agreement and recorded this Agreement against the Hotel Land.

AGREEMENT

NOW, THEREFORE, Hotel Facility Owner and Hotel Master Tenant hereby agree as follows:

1. Assignment by Hotel Facility Owner. Hotel Facility Owner hereby assigns, transfers and grants to Hotel Master Tenant, and its successors and assigns, all of the Hotel Facility Owner's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Parking Facility License Agreement, other than the Retained Powers (collectively, "**Rights and Obligations**").

2. Acceptance and Assumption by Hotel Master Tenant. Hotel Master Tenant hereby accepts such assignment and assumes all such Rights and Obligations, whether accruing before or on or after the Effective Date (as defined in Section 13) under the Parking Facility License Agreement. Hotel Master Tenant agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of the Hotel Operator arising from or under the Parking Facility License Agreement.

3. Hotel Master Tenant as Hotel Operator. Hotel Master Tenant shall hereafter be the Hotel Operator for purposes of the Parking Facility License Agreement.

4. Parking Facility License 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 Parking Facility License Agreement are hereby ratified and shall remain in full force and effect.

5. Recording. Hotel Facility Owner shall cause this Agreement to be recorded with the DuPage County Recorder, and shall promptly provide conformed copies of the recorded Agreement to the City.

6. Successors and Assigns. Subject to the restrictions on transfer set forth in the Parking Facility License 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. Hotel Master Tenant Address for Notices. The address of Hotel Master Tenant for the purpose of notices, demands and communications under the Parking Facility License Agreement shall be:

[INSERT HOTEL MASTER TENANT'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 ("**Effective Date**").

IN WITNESS WHEREOF, Hotel Facility Owner and Hotel Master Tenant have entered into this Agreement as of the date first above written.

[INSERT SIGNATURE PAGES, NOTARY BLOCKS AND
EXHIBIT A WHICH DESCRIBES THE TRANSFERRED PROPERTY]

EXHIBIT I
HOTEL FACILITY OWNER RE-ASSUMPTION

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)

HOTEL FACILITY OWNER RE-ASSUMPTION

THIS HOTEL FACILITY OWNER RE-ASSUMPTION ("**Agreement**") is entered into as of the _____ day of _____, 20____, by and among _____ ("**Hotel Facility Owner**"), and _____ ("**Hotel Master Tenant**").

RECITALS

A. Water Street Property Owner, LLC, a Delaware limited liability company (the "**Developer**"), has entered into that certain Water Street Parking Facility License Agreement dated _____ (as amended, the "**Parking Facility License Agreement**") with the City of Naperville, Illinois, an Illinois municipal home rule corporation (the "**City**") which Parking Facility License Agreement was recorded in the records of DuPage County on _____ as document number _____. The Parking Facility License Agreement encumbers the Hotel Land identified on Exhibit A hereto (the "**Hotel Land**"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Parking Facility License Agreement.

[NOTE TO PREPARER: INCLUDE NEXT RECITAL IF THERE HAVE BEEN ANY ASSIGNMENTS BY THE DEVELOPER WHICH HAVE OCCURRED PRIOR TO THE EXECUTION OF THIS AGREEMENT]

B. Pursuant to an Assignment and Assumption Agreement dated _____ between _____ and Hotel Facility Owner which was recorded on _____ as document number _____, Hotel Facility Owner became the Hotel Facility Owner under the Parking Facility License Agreement and was assigned the Hotel Facility Owner's interest in the Parking Facility License Agreement and (in turn) Hotel Facility Owner assumed all of the obligations of the Hotel Facility Owner under the Parking Facility License Agreement.

[B/C]. Pursuant to that certain a Hotel Master Tenant Assumption dated _____ between Hotel Master Tenant and Hotel Facility Owner which was recorded on _____ as document number _____, Hotel Master Tenant became the Hotel Operator under the Parking Facility License Agreement.

[C/D]. The Hotel Master Lease between Hotel Facility Owner and Hotel Master Tenant has terminated and Hotel Facility Owner. By virtue of such termination the Hotel Facility Owner shall again become the Hotel Operator under the Parking Facility License Agreement provided that the Hotel Facility Owner and Hotel Master Tenant executes this Agreement and record this Agreement against the Hotel Land

AGREEMENT

NOW, THEREFORE, Hotel Facility Owner and Hotel Master Tenant hereby agree as follows:

1. Assignment by Hotel Master Tenant. Hotel Master Tenant hereby assigns, transfers and grants to Hotel Facility Owner, and its successors and assigns, all of the Hotel Master Tenant's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Parking Facility License Agreement (collectively, "**Rights and Obligations**").

2. Acceptance and Assumption by Hotel Facility Owner. Hotel Facility Owner hereby accepts such assignment and assumes all such Rights and Obligations, whether accruing before or on or after the Effective Date (as defined in Section 13) under the Parking Facility License Agreement. Hotel Facility Owner agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of the Hotel Operator arising from or under the Parking Facility License Agreement.

3. Hotel Facility Owner as Hotel Operator. Hotel Facility Owner shall hereafter be the Hotel Operator for purposes of the Parking Facility License Agreement.

4. Parking Facility License 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 Parking Facility License Agreement are hereby ratified and shall remain in full force and effect.

5. Recording. Hotel Facility Owner shall cause this Agreement to be recorded with the DuPage County Recorder, and shall promptly provide conformed copies of the recorded Agreement to the City.

6. Successors and Assigns. Subject to the restrictions on transfer set forth in the Parking Facility License 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. Hotel Facility Owner Address for Notices. The address of Hotel Facility Owner for the purpose of notices, demands and communications under the Parking Facility License Agreement shall be:

[INSERT HOTEL FACILITY OWNER'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.

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EXHIBIT A WHICH DESCRIBES THE TRANSFERRED PROPERTY]