CITY OF BATAVIA

To: The Committee of the Whole

From: Laura Newman, City Administrator

Date: February 22, 2019

Re: One Washington Place Environmental Remediation, Approvals for **ORD19-11 AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF BATAVIA, ILLINOIS AND 1 N. WASHINGTON, L.L.C., AND RELATING TO THE TIF REDEVELOPMENT PROJECT OF A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET,** and **ORD 19-12 AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO THE TIF REDEVELOPMENT AGREEMENT WITH 1 N. WASHINGTON L.L.C., AND RELATING TO A MULTI-STORY, MULTI-USE BUILDING AT NORTH WASHINGTON STREET**

Before the Committee of the Whole on February 26, 2019 are three decisions regarding the project commonly known as One Washington Place:

1. Does the City wish to continue this project given that it must bear the cost to remediate environmental contamination discovered on the site?
2. Is the City willing to sign an Environmental Indemnification Agreement accepting liability for any environmental contamination present on the redevelopment site prior to the property being conveyed to the developer? ORD 19-11
3. Will the City agree to the terms of the Second Amended and Restated Redevelopment Agreement which transfers responsibility for performing the remaining demolition and all environmental remediation to the developer, subject to these costs being reimbursed by the City? ORD 19-12

Answering all questions in the affirmative means that the project will move forward. If the answer to any of these questions is no, the project will likely be terminated.

1. Does the City wish to continue this project given that it must bear the cost to remediate environmental contamination discovered on the site?

In May 2018 the City learned of lead and elevated Ph levels in certain areas of the redevelopment site known as One Washington Place. Under the terms of the original and First Amended and Restated Redevelopment Agreements (RDA), the City was responsible for remediation of any environmental contamination prior to transfer of the redevelopment site to the developer for excavation and construction. Based upon the estimated sizes of the fields of contamination identified in the environmental consultant's report, the cost of remediation is expected to exceed $350,000. As such, Article 2.06 of the First Amended and Restated RDA was invoked, which required that the City and the developer meet to discuss whether the project should proceed or be terminated:

2.06 Environmental Clean Up. At this point, and at any point prior to the beginning of construction, if any environmental conditions are discovered that require clean up exceeding the cost of $350,000, the parties will meet to assess the cost and effect of the required environmental remediation to enable the Project to be completed ("City Environmental Costs") and make a joint decision whether to proceed or terminate the Agreement, and either party may terminate the Agreement if no agreement is reached as provided in Sections 3.02(a)(ii), 3.03(a)(ii) and 3.04(c). Any environmental clean up to be done on the Redevelopment site by the City shall be done in an expeditious manner in keeping with any requirements of the any remediation plan and related requirements of applicable environmental laws and/or the Illinois Environmental Protection Agency or other organization having jurisdiction over the environmental condition of the Property.

After meeting and conferring with the developer, staff and the developer agree that the most cost-effective and time-efficient way to accomplish remediation of the site is to shift responsibility for performing the remediation work to the developer, although the cost for such remediation remains, as in the original RDA, the responsibility of the City. This eliminates the need to mobilize two separate crews for demolition and excavation prior to construction of the project. Instead, the same company or companies can perform all demolition and excavation work with the contaminated soils being directed for disposal at a specialized waste site according to an IEPA-approved Remedial Action Plan. Also, the barrier fencing surrounding the project would only be erected once and remain throughout the entirety of the project

During the period when staff and the developer were meeting to discuss a plan for the developer to assume responsibility for carrying out demolition and remediation activities, further testing was done on the contamination zones to more accurately estimate the potential cost of remediation. After such testing was completed, the environmental consultants estimated the cost to remove the contaminated soils to be between $395,000 and $590,000. Pursuant to the original and the First Amended and Restated RDA the cost of remediation of any environmental contamination present on the site prior to conveyance to the developer are to be bourn by the City. However, the City may also decide that the cost of remediation is prohibitive and choose, without penalty to terminate the project and the RDA.

Staff's recommendation is that the City agrees to proceed with remediation of the contamination and continue with the project.

PROS:

- This $40 million mixed use development will provide hundreds of downtown residents that will create a vibrant economic environment attracting numerous businesses to our downtown. $11 million of the $16 million in bonds that the City is providing to the project will be used for the construction of a 351-space public parking garage. In addition, the project will result in an additional 6,000 square feet of commercial space.
- If the project is terminated for some other reason in the future, the redevelopment site is more marketable for redevelopment as a clean site. It will also accommodate a larger variety of configurations and uses.

CONS

- An alternate development may not need to excavate as much material and could environmentally encapsulate the contaminated soils, potentially reducing or eliminating remediation costs.
- The first step in the remediation process will be to remove the existing parking structures on the redevelopment site thus reducing parking resources in the area.
- If the project is terminated prior to conveyance of the property to the developer there will have been additional time that has lapsed on the term of the Tax Increment Financing district, thus reducing the number of years that incremental tax may be leveraged for an alternative project.

2. Is the City willing to sign an Environmental Indemnification Agreement accepting liability for any environmental contamination present on the redevelopment site prior to the property being conveyed to the developer? ORD 19-11

The developer has secured a commitment for financing for this project only on the contingency that the City is willing to sign an Environmental Indemnification Agreement suitable to the lender. Furthermore, the developer is unwilling to perform the remediation work without this Environmental Indemnification Agreement in place.

The Environmental Indemnification Agreement (attached to ORD 19-11) has been negotiated with the developer and its lender in consultation with the City Attorney and special counsel engaged to provide advice on environmental legal issues. The agreement indemnifies and holds harmless the developer and lender and their successors in interest from any and all liability for environmental contamination that existed on the site prior to the conveyance of the property to the developer. According to the Second Amended and Restated Redevelopment Agreement, the property is to be conveyed to the developer at the same time the building permit is issued. The developer, its lender or their successors in interest will bear the burden of proving that any additional environmental contamination (beyond what is the subject of the current Remedial Action Plan approved by the IEPA) existed prior to the developer taking title to the property.

Staff recommends that the Committee of the Whole recommends approval by the City Council of ORD 19-11, AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF BATAVIA, ILLINOIS AND 1 N. WASHINGTON, L.L.C., AND RELATING TO THE TIF REDEVELOPMENT PROJECT OF A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET.

PROS

- The project will move forward, providing a $40 million mixed use development with hundreds of downtown residents that will create a vibrant economic environment attracting numerous businesses to our downtown. $11 million of the $16 million in bonds that the City is providing to

the project will be used for the construction of a 351-space public parking garage. In addition, the project will result in an additional 6,000 square feet of commercial space.

CONS

- There is some residual risk of additional liability by not having a specific expiration of the City's liability, however, it is expected that more than 90% of all soil on the redevelopment site will be removed during exaction (down to bedrock) leaving very little area where contamination might be found in the future. If contamination is found in the future, it would be the burden of the developer, the lender or their successors in interest to prove that the material was present on the site prior to its conveyance to the developer.

3. **Will the City agree to the terms of the Second Amended and Restated Redevelopment Agreement which transfers responsibility for performing the remaining demolition and all environmental remediation work to the developer, subject to these costs being reimbursed by the City? ORD 19-12**

The final matter to be decided for the project to move forward is whether to agree to the terms of the Second Amended and Restated Redevelopment Agreement. The most important changes to the agreement relate to the developer, rather than the City, being responsible for performing the demolition and excavation work related to remediation of the environmental contamination on the redevelopment site. The City would still bear the costs of those activities as it had in prior agreements.

Another change prompted by the transfer of remediation responsibilities is the amendment of the timeline for construction of the project. Pursuant to the timelines in the Second Amended and Restated RDA, the developer expects to begin demolition and excavation activities in April 2020. Other changes are of relatively minor importance.

Staff recommends that the Committee of the Whole recommends approval by City Council of RES 19-12 AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO THE TIF REDEVELOPMENT AGREEMENT WITH 1 N. WASHINGTON L.L.C., AND RELATING TO A MULTI-STORY, MULTI-USE BUILDING AT NORTH WASHINGTON STREET

PROS

- The project will move forward, providing a $40 million mixed use development with hundreds of downtown residents that will create a vibrant economic environment attracting numerous businesses to our downtown. $11 million of the $16 million in bonds that the City is providing to the project will be used for the construction of a 351-space public parking garage. In addition, the project will result in an additional 6,000 square feet of commercial space.
- Transferring responsibility to the developer to perform the remaining demolition and remediation work decreases the cost and reduces the time necessary to complete the overall project.

CONS

- As with any large development project, there will continue to be risks that the project may not be completed for some other reason not yet identified or realized, resulting in an inability to recoup what has been invested.

In summary, staff is recommending that:

- the Committee of the Whole decide to proceed with the environmental remediation of the redevelopment site, and
- that the Committee of the Whole recommends for approval ORD 19-11 AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF BATAVIA, ILLINOIS AND 1 N. WASHINGTON, L.L.C., AND RELATING TO THE TIF REDEVELOPMENT PROJECT OF A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET, and
- and that the Committee of the Whole recommends for approval ORD 19-12 AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO THE TIF REDEVELOPMENT AGREEMENT WITH 1 N. WASHINGTON L.L.C., AND RELATING TO A MULTI-STORY, MULTI-USE BUILDING AT NORTH WASHINGTON STREET

Cc: Kevin Drendel, City Attorney

David Patzelt, Shodeen

CITY OF BATAVIA, ILLINOIS
ORDINANCE 19-11

AN ORDINANCE AUTHORIZING EXECUTION OF AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF BATAVIA, ILLINOIS AND 1 N. WASHINGTON L.L.C., AND RELATING TO THE TIF REDEVELOPMENT PROJECT OF A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET

ADOPTED BY THE MAYOR AND CITY COUNCIL THIS 4th DAY OF MARCH, 2019

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 4th day of March, 2019

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

CITY OF BATAVIA, ILLINOIS
ORDINANCE 19-11

AN ORDINANCE AUTHORIZING EXECUTION OF AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF BATAVIA, ILLINOIS AND 1 N. WASHINGTON L.L.C., AND RELATING TO THE TIF REDEVELOPMENT PROJECT OF A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET

WHEREAS, a certain Agreement between the City of Batavia, Illinois (the "City") and 1 N. Washington, LLC (the "Developer") entitled "1 North Washington Redevelopment Agreement" was authorized by City Council to be executed by Ordinance 16-57 on September 6, 2016 in order to provide for the construction of a mixed use building at North Washington Avenue and East Wilson Street, and was authorized to be amended by Ordinance 18-09 on January 2, 2018 as the First Amended and Restated 1 North Washington Redevelopment Agreement (the "Agreement"); and,

WHEREAS, the City is required, as part of the Agreement, to perform environmental testing and remediation on the redevelopment site; and,

WHEREAS, such testing resulted in the discovery of contamination on the redevelopment site for which the cost of remediation is expected to exceed $350,000, requiring, according to the Agreement, the parties to meet and confer about whether, under the circumstances, the redevelopment project will move forward or be terminated; and,

WHEREAS, the parties have met and conferred and determined that it is still possible for the project to move forward and both parties are desirous that the project should move forward, and

WHEREAS, as a result of environmental contamination being discovered on the redevelopment site, the Developer's lender now requires an Environmental Indemnification Agreement between the City and the Developer as a condition to providing Developer financing for the redevelopment project; and,

WHEREAS, the City is willing to accept the terms of the Environmental Indemnification Agreement, attached as Exhibit 1;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are authorized to execute the document entitled, "Environmental Indemnification Agreement", which is attached as Exhibit 1.

SECTION 2: That this Ordinance shall be in full force and effect from and after its presentation, passage, approval, and publication in pamphlet form as provided by law.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 4th day of March 2019.

APPROVED, by me as Mayor of said City of Batavia, Illinois, this 4th day of March 2019.

_____

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Chanzit					Meitzler				
4	Malay					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										

VOTE: 0Ayes 0Nays 0 Absent 0 Abstentions
Total holding office: Mayor and 14 aldermen

ATTEST:

_____

Ellen Posledni, City Clerk

EXHIBIT 1

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this "Agreement"), dated as of ___, 2019 is made by **1 N. WASHINGTON, L.L.C.**, an Illinois limited liability company (the "Developer") and the **CITY OF BATAVIA**, an Illinois municipal corporation, (hereinafter the "City" or the "Indemnitor").

R E C I T A L S:

A. Pursuant to that certain Second Amended and Restated Redevelopment Agreement (the "RDA") by and between the Developer and the City dated _____, 2019, the City is obligated to complete specific environmental remediation activities necessary to complete the Project, as that term is defined under the RDA, on that certain property legally described on Exhibit "A" attached hereto (the "Property").

B. As referenced in the reports attached hereto as Exhibit "B" (collectively, the "Reports"), the City has identified certain specific environmental conditions in need of remediation (the "Environmental Conditions").

C. As time is of the essence in moving the Project forward, the parties hereby agree to modify the timing and responsibility for the environmental cleanup as more specifically described in the RDA so that the Developer shall, undertake environmental cleanup after transfer of title of the Redevelopment Site to the Developer subject to the terms and conditions of this Agreement.

D. As a condition precedent to the Developer obtaining a loan commitment, completing drawings for the Project, bidding the Project, applying for permits and taking title to the Redevelopment Site, the City hereby agrees to indemnify and hold Developer and those interested parties claiming an interest in the Property by or through the Developer harmless from and against environmental conditions and costs incurred by Developer in remediating the environmental conditions that were intended to be the City's responsibility in the original RDA, obtaining a focused No Further Remediation letter from the IEPA and/or addressing any environmental conditions at, in or on the Property as of the date Developer takes title to the Property.

E. This Agreement is intended to induce the Developer to take title to the Property and to undertake the environmental cleanup that was originally to be the City's responsibility before transferring title to the Developer. The scope of this Agreement is limited to the contamination in the soil existing as of the time of the transfer of title.

F. In the event of termination of the Project, costs will be borne by the Parties according to Article 3.04 of the Second Amended and Restated Redevelopment Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the City hereby certifies, represents, covenants and agrees as follows:

1. **Definitions**: As used herein, the following terms shall have the meanings specified below:

1.1 The term "Agreement" shall mean this Environmental Indemnity Agreement and all modifications, supplements, and amendments thereto.

1.2 The term "De Minimis Amount" shall mean that small quantity of any Special Waste or Hazardous Substance as each term is defined by the Illinois Environmental Protection Act, (collectively "Environmental Laws" as hereinafter defined), which quantity is on the Property as of the date of title transfer, and which quantity is managed in a manner that both (i) does not constitute a violation or threatened violation of any Environmental Laws or require any reporting or disclosure under any Environmental Laws and (ii) is consistent with customary business practice for such operations in the State of Illinois.

1.3 The term "Environmental Claim" shall mean any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, inquiries, investigations, studies or notices relating to actual or the alleged existence of any Special Waste, Non-special Waste or Hazardous Substance on the Property or the alleged actual violation of any Environmental Law including without limitation those arising as a result of strict liability, whether under Environmental Law or otherwise,.

1.4 The term "Environmental Laws" shall mean any applicable federal, state or local statute, regulation, rule, code, ordinance, common law or requirement regulating, relating to, or imposing obligations, liabilities, or standards of conduct concerning pollution, natural resources, protection of human health, protection of the environment on, under or about the Property.

1.5 The term "Event of Default" shall mean any default or failure in performance of any provision of this Agreement.

1.6 The term "Hazardous Substances" shall have the meaning as defined by the Illinois Environmental Protection Act.

1.7 The term "Special Waste" shall have the meaning as defined by the Illinois Environmental Protection Act.

1.8 The term "Non-special Waste" shall mean certain non-liquid, non-hazardous industrial-process and pollution-control wastes which meet all of the requirements of Section 3.475(c)(1) of the Illinois Environmental Protection Act.

1.9 The term "Indemnified Parties" shall mean and include Developer, its members, managers and any person and entity identified in the RDA and this Agreement including, without limitation, any future lender who derives an interest from or through the Developer.

1.10 The term "Property" shall also mean the Redevelopment Site as defined in the RDA.

1.11 The term "Remediation" shall mean all work required by the IEPA and reduced to a written remedial action plan, as hereinafter defined, provided to the City setting forth the tasks required to obtain a focused No Further Remediation Letter for the Property based on the Reports and any additional work required by the IEPA as a result of the discovery of additional Hazardous Substance, Special Waste or non-Special Waste on the Property during cleanup, excavation, demolition or construction that is discovered on the Property at any time provided it can be shown to have existed on the Property prior to the transfer of title to Developer. Developer and/or any other of the Indemnified Parties has the burden of proving the additional Hazardous Substance, Special Waste or non-Special Waste existed in the soil on the Property prior to the transfer of title to Developer.

1.12 The term "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any Special Waste, Non-Special Waste or non-De Minimis Amount of Hazardous Substance into the environment.

1.13 This Agreement incorporates all the terms and definitions of those terms as stated the RDA as amended unless expressly defined in this Agreement.

2. **Representations and Warranties**.

2.1 Except as disclosed in the Reports, Indemnitor represents to the Indemnified Parties that as of the execution date of this Agreement, (i) the Indemnitor has no knowledge of any Special Waste, Non-Special Waste or Hazardous Substances on the Property other than the Environmental Conditions identified in the Reports; (ii) neither the Indemnitor nor the Property is in violation of any Environmental Law applicable to the Property, and (iii) neither the Indemnitor nor Property, are subject to any existing, pending or threatened investigation pertaining to the Property by any federal, state or local governmental authority or are subject to any remedial obligation or lien under or in connection with any Environmental Law; provided, however, that the foregoing representation and warranty does not apply to De Minimis Amounts.

2.2 Except as specifically disclosed in the Reports, Indemnitor represents to the Indemnified Parties to the best of Indemnitor's knowledge that Indemnitor, including, without limitation, any officer, director, employee, agent of Indemnitor, has no knowledge or notice of the actual, alleged or threatened presence or Release of Special Waste, Non-Special Waste or Hazardous Substances in, on, around or potentially affecting any part of the Property or the soil, groundwater or soil vapor on or under the Property, or the migration of any Special Waste, Non-Special Waste or Hazardous Substance to any other property adjacent to or in the vicinity of the Property; provided, however, that the foregoing representation and warranty does not apply to De Minimis Amounts.

2.3 Developer represents that its intended future use of the Property will not result in the Release of any Special Waste, Non-Special Waste or Hazardous Substance other than De Minimis Amounts, in, on, around or potentially affecting any part of the Property or in the soil, groundwater or soil vapor on or under the Property, or the migration

of any Special Waste, Non-Special Waste or Hazardous Substance from or to any other property adjacent to or in the vicinity of the Property. To the extent Developer, its agents, employee, contractor or subcontractor contributes to a Release or migration of contaminated material as part of its construction, or, without limitation, any other activity, intentionally or otherwise, the City's indemnification obligation will be limited under this EIA or other agreement in which Developer and City are parties by either assigning the attendant costs and obligations to Developer or releasing the City from its indemnification obligations for removal or cleanup thereof.

2.4 As specifically disclosed in the Reports, City is aware of the Environmental Conditions on the Property and agrees and acknowledges that it shall be responsible for remediation of the Environmental Conditions in the Reports and any other non-De Minimis Amounts of Hazardous Substances and Special Waste requiring further remediation that are discovered in the process of doing the Remediation, excavation and/or work on the Property for the Project, wherein Remediation shall be deemed those activities required in order for the issuance of a focused No Further Remediation letter ("NFR Letter") by the Illinois Environmental Protection Agency in accordance with applicable Environmental Laws.

3. **Covenants of Indemnitor**.

3.1 Indemnitor, for so long as Indemnitor owns and has sole control over the Property, shall neither use nor permit any third party to use, generate, manufacture, produce, store, or Release, on, under or about the Property, or transfer to or from the Property, any Special Waste, Non-Special Waste or Hazardous Substance except De Minimis Amounts in compliance with all applicable Environmental Laws; provided, however, that if any third party under the control or authority of the Indemnitor, by act or omission or by intent or accident, allows any of the foregoing actions to occur, Indemnitor shall promptly remedy such condition, at their sole expense and responsibility. Furthermore, as long as Indemnitor owns and has sole control over the Property, Indemnitor shall not permit any environmental liens to be placed on any portion of the Property.

3.2 City shall comply and require all occupants of the Property, regardless of length of occupancy, to comply with all Environmental Laws governing or applicable to Special Waste or Hazardous Substances, including those requiring disclosures to prospective and actual buyers of all or any portion of the Property.

3.3 During the time that Indemnitor owns the Property, Indemnitor shall promptly notify Developer in writing if Indemnitor, including, without limitation, any officer, director, employee, agent, of any Indemnitor, has any actual knowledge or notice of any of the following: (i) that any statement in Section 2 of this Agreement is no longer accurate, (ii) any lien, action or notice affecting the Property or Indemnitor resulting from any violation or alleged violation of the Environmental Law, (iii) the institution of any investigation, inquiry or proceeding concerning Indemnitor or the Property pursuant to any Environmental Law or otherwise relating to Special Waste or Hazardous Substances, or (iv) the discovery of any Release or any other occurrence, condition or state of facts which

would render any representation or warranty contained in this Agreement incorrect in any respect if made at the time of such discovery.

3.4 During the time that Indemnitor owns the Property, Indemnitor's obligations under this Agreement shall not be diminished or affected in any respect as a result of any notice, disclosure or knowledge, if any, to or by any of the Indemnified Parties of the Release, presence, existence or threatened Release of Special Waste or Hazardous Substances, in non-De Minimis Quantities, in, on, around, or potentially affecting the Property or the soil, groundwater or soil vapor on or under the Property, or of any matter covered by Indemnitor's obligations hereunder.

3.5 Before title of the Property is transferred to Developer, and as a condition of that transfer, Indemnitor shall conduct and complete, in accordance with the requirements of the RDA and applicable Environmental Laws, actions to enroll the Property in the Illinois Environmental Protection Agency (the "IEPA") Site Remediation Program and shall complete all remedial tasks necessary to pursue a focused No Further Remediation letter ("NFR letter") for the Property for the Environmental Conditions identified in the Reports (a "Remedial Action Plan"), and Indemnitor shall apply for written assurance from the IEPA that a focused NFR letter shall be issued if the Remediation Plan is completed as proscribed therein (a "Comfort letter"). Indemnitor shall provide to Developer and its lender copies of the Remedial Action Plan, Comfort Letter, if any is obtained, and all results and reports relating to such Remedial Action Plan and related actions.

4. **Developer Rights**. Prior to the transfer of title to the Developer, the Developer shall have the right, but not the obligation, upon prior written notice to the City, to enter onto the Property at any reasonable time to take and remove soil or groundwater samples, conduct tests and/or site assessments on any part of the Property. Developer shall indemnify and hold the City harmless from and against any and all claims, damages and liabilities arising from the Developer's access to the Property, and shall restore the Property to the condition in which it existed prior to any sampling, testing or assessment.

5. **Indemnification**. Notwithstanding the transfer of title to Developer, Indemnitor shall indemnify and hold the Indemnified Parties harmless from, for and against any and all claims and, liabilities specifically and exclusively directly related to those Environmental Conditions identified in the Reports and any Special Waste, Non-Special Waste or non-De Minimis Amounts of Hazardous Substances discovered during the course of completing the cleanup in compliance with the Remedial Action Plan or that may be subsequently discovered prior to the issuance of an NFR Letter by the IEPA, or after issuance of the NFR Letter , provided that the Environmental condition that is discovered existed on the Property prior to transfer of title to the Developer. Developer and/or any other of the Indemnified Parties has the burden of proving the additional Hazardous Substance, Special Waste or non-Special Waste existed on the Property prior to the transfer of title to Developer. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to (i) matters resulting solely from the negligence or willful misconduct of any Indemnified Party, or (ii) matters resulting solely from the actions of Indemnified Parties taken after any such parties have taken title to, or exclusive possession of the Property.

6. **Reservation of Rights**. Nothing in this Agreement shall be construed to limit any claim or right which any Indemnified Party may otherwise have at any time against Indemnitor or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal, state or local Environmental Laws or other applicable law, regulation or ordinance.

7. **No Waiver; Rights Cumulative**. If any Indemnified Party delays or fails to exercise any right or remedy against Indemnitor, that alone shall not be construed as a waiver of that right or remedy. All remedies of any Indemnified Party against Indemnitor are cumulative.

8. **Successors and Assigns**. This Agreement is assignable by Developer to any Indemnified Parties.

9. **Survival.** Subject to the provisions of Paragraphs 5 and 6 of this Agreement, the indemnity obligations of Indemnitor under this Agreement shall be deemed to have been satisfied and this Agreement shall be deemed terminated upon issuance of the NFR Letter by the IEPA for the Property.

10. **Full Recourse**. The indemnity contained herein shall not be subject to any nonrecourse or other limitation of liability provisions contained in any document or instrument executed and delivered in connection with the loan and the liability of Indemnitor hereunder shall not be limited by any such nonrecourse or similar limitation of liability provisions.

11. **Misrepresentation**. If any material warranty, representation or statement contained herein shall be or shall prove to have been false when made or if Indemnitor shall fail or neglect to perform or observe any of the terms, provisions or covenants contained herein, the same shall constitute an Event of Default.

12. **Notices**. Any notice required or permitted in connection herewith shall be given in writing, in the manner required under the RDA, and the Indemnitor shall have no obligation to notify Developer's lender, it being the Developer's obligation to notify its lender.

13. **Reliance; Separate Action**. Indemnitor acknowledges that Developer and its lender that is providing financing for the Project has and/or will rely upon the representations, warranties and agreements herein set forth in closing and funding (or modifying as the case may be) the loan that the Developer will receive from its lender and that the execution and delivery of this Agreement is an essential condition but for which Developer's lender would not close or fund (or modify) any loan.

14. **Waiver**. Indemnitor waives any right or claim of right to cause any lender to proceed against any of the security for any loan before proceeding under this Agreement against Indemnitor.

15. **Construction**. In this Agreement, the word "person" includes any individual, company, trust or other legal entity of any kind. If this Agreement is executed by more than one person, the words "Indemnitor", "Guarantor" and "Developer" include the plural form of all such persons. The word "include(s)" means "include(s), without limitation," and the word "including"

means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa.

16. **Severability**. Every provision of this Agreement is intended to be severable. If any term, provision, section or subsection of this Agreement is declared to be illegal or invalid, for any reason whatsoever, by a court of competent jurisdiction, such illegality or invalidity shall not affect the other terms, provisions, sections or subsections of this Agreement, which shall remain binding and enforceable.

17. **Time; No Course of Dealing**. Time is of the essence of this Agreement, and of each and every provision hereof. The waiver by Indemnified Party of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach of breaches.

18. **Governing Law**. This Agreement and the transaction contemplated hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflict of laws principles.

19. **Counterparts**. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all such counterparts together shall constitute but one Agreement.

20. **Captions for Convenience**. The captions and headings of the paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

21. **JURISDICTION AND VENUE**. INDEMNITOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY INDEMNITOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS. INDEMNITOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY INDEMNIFIED PARTIES IN ANY OF SUCH COURTS. INDEMNITOR WAIVES ANY CLAIM THAT KANE COUNTY, ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR INDEMNITOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY INDEMNIFIED PARTIES OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY INDEMNIFIED PARTIES OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND INDEMNITOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

22. **WAIVER OF JURY TRIAL**. INDEMNITOR AND INDEMNIFIED PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG INDEMNITOR AND INDEMNIFIED PARTIES ARISING OUT OF OR IN ANY WAY

RELATED TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN INDEMNITOR AND INDEMNIFIED PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date set forth herein.

City of Batavia,
an Illinois municipal corporation

By: _____
Name: _____
Title: _____

DEVELOPER:

1 N. Washington, L.L.C., an Illinois limited liability company

By: Shodeen Group, L.L.C., a Delaware limited liability company, its Manager

By: Tri-City Land Management Company, L.L.C., an Illinois limited liability company, its Manager

By:

_____
Craig A. Shodeen, its Manager

_____
Beth C. Shodeen, its Manager

_____
Anna B. Harmon, its Manager

EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN ONE NORTH WASHINGTON PLACE CONSOLIDATION, BEING A SUBDIVISION OF PART OF BLOCK 7 IN THE ORIGINAL TOWN OF BATAVIA ON THE EAST SIDE OF THE FOX RIVER, BEING PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID ONE NORTH WASHINGTON PLACE CONSOLIDATION RECORDED MARCH 23, 2018 AS DOCUMENT 2018K013299, IN KANE COUNTY, ILLINOIS.

EXHIBIT B

Focused Site Investigation Report Dated December 2018 by Huff & Huff, a Subsidiary of GZA

Note: See full Report on file at City of Batavia for review of all exhibits attached thereto and incorporated therein by reference.

CITY OF BATAVIA, ILLINOIS
ORDINANCE 19-12

AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO THE TIF REDEVELOPMENT AGREEMENT WITH 1 N. WASHINGTON L.L.C., AND RELATING TO A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET

ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 4th DAY OF MARCH, 2019

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 4th day of March, 2019

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

CITY OF BATAVIA, ILLINOIS
ORDINANCE 19-12

AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO THE TIF REDEVELOPMENT AGREEMENT WITH 1 N. WASHINGTON L.L.C., AND RELATING TO A MULTI-STORY, MIXED-USE BUILDING AT NORTH WASHINGTON AVENUE AND EAST WILSON STREET

WHEREAS, the City of Batavia is authorized by Illinois Law to create tax increment financing redevelopment areas within its boundaries to aid in the redevelopment of certain areas of the City; and

WHEREAS, on January 17, 2017, the City of Batavia enacted those ordinances necessary to create such an area in a portion of the Batavia downtown, commonly known as TIF District 5; and

WHEREAS, 1 North Washington, L.L.C., ("the Developer") wishes to undertake a wholesale redevelopment of an approximately 2.25-acre site, presently consisting of eight contiguous land parcels and generally located at the northwest corner of N. Washington Avenue and E. Wilson Street, such property wholly located within either TIF District 1 or TIF District 3 and;

WHEREAS, the City Council has determined that the improvements would not be possible without the assistance of TIF funds to aid in the project, such assistance to be comprised of both a grant of funds and the extension of a loan; and

WHEREAS, a certain Agreement entitled "1 North Washington Redevelopment Agreement" was authorized by City Council to be executed by Ordinance 16-57 on September 6, 2016, and amended by Ordinance 18-09 on January 2, 2018 as the First Amended and Restated 1 North Washington Redevelopment Agreement (the "Agreement"); and,

WHEREAS, the City is required, as part of the Agreement, to perform environmental testing and remediation on the redevelopment site; and,

WHEREAS, such testing resulted in the discovery of contamination on the redevelopment site for which the cost of remediation is expected to exceed $350,000, requiring, according to the Agreement, the parties to meet and confer about whether, under the circumstances, the redevelopment project will move forward or be terminated; and,

WHEREAS, the parties have met and conferred and determined that it is still possible for the project to move forward and both parties are desirous that the project should move forward; and,

WHEREAS, the parties have determined that it is more efficient and cost-effective for the Developer to undertake the remaining demolition and environmental remediation work, at the City's expense as required in the Agreement; and,

WHEREAS, it is necessary to amend the existing Agreement in order to reflect these changes and others agreed to by the parties;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are authorized to execute the document entitled, "Second Amended and Restated 1 North Washington Redevelopment Agreement", which is attached hereto as Exhibit 1.

SECTION 2: That this Ordinance shall be in full force and effect from and after its presentation, passage, approval, and publication in pamphlet form as provided by law.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 4th day of March 2019.

APPROVED, by me as Mayor of said City of Batavia, Illinois, this 4th day of March 2019.

_____
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Chanzit					Meitzler				
4	Malay					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: 0Ayes 0Nays 0 Absent 0 Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____
Ellen Posledni, City Clerk

EXHIBIT 1

SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

(1 NORTH WASHINGTON AVENUE)

BETWEEN

1 N. WASHINGTON, L.L.C.,
AN ILLINOIS LIMITED LIABILITY COMPANY

AND

CITY OF BATAVIA,
AN ILLINOIS MUNICIPAL CORPORATION

TABLE OF CONTENTS
(TO BE UPDATED)

SECOND AMENDED AND RESTATED
1 NORTH WASHINGTON AVENUE
REDEVELOPMENT AGREEMENT

THIS 1 NORTH WASHINGTON AVENUE REDEVELOPMENT AGREEMENT (this "Restated Agreement"), dated as of _____, 2019 (the "Effective Date" or such later date that Developer is in possession of a fully executed copy of this Agreement in which event such later date shall be the Effective Date), is made and entered into by and between **1 N. WASHINGTON, L.L.C.,** an Illinois limited liability company ("Developer"), and its assigns and **CITY OF BATAVIA**, an Illinois municipal corporation ("City"). Developer and City are sometimes hereinafter together called the "Parties" or individually a "Party".

RECITALS

A. City has the authority to promote the health, safety and welfare of City and its inhabitants, to prevent the spread of blight and to encourage private development in order to enhance the local tax base, create employment, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

B. The City currently owns the property acquired from the First Baptist Church located at 1 N. Washington Ave., Batavia, IL, and legally described in the document attached hereto and incorporated herein by reference as **Exhibit A** (the "Church Property"), as well as the former Service Master property at 111 E. Wilson Street, vacant property at 115 E. Wilson Street and current City parking lots at 20 N. River Street, such properties legally described in the aggregate in the document attached hereto and incorporated herein by reference as **Exhibit B** (the "City Property").

C. The properties located at 113 E. Wilson St. Batavia, IL legally described in the document attached hereto and incorporated herein by reference as **Exhibit C** ("Fisher Property") and 121 E. Wilson St. Batavia, IL legally described in the document attached hereto and incorporated herein by reference as **Exhibit D** (the "Frydendall Property") the driveway easement legally described in the document attached hereto and incorporated herein by reference as **Exhibit E** (the "8 N. River and 109 E. Wilson Easement") running in favor of the property at 8 N. River St. and 109 E. Wilson St. legally described in the document attached hereto and incorporated herein by reference as **Exhibit F** ("8 N. River and 109 E. Wilson Easement Benefitting Property, have been acquired by the City and, together with the aforementioned Church Property, former ServiceMaster property and current City parking lots comprise all of the property legally described in the document attached hereto and incorporated herein by reference as **Exhibit G** (the "Redevelopment Site" or "Site").

D. Developer desires to redevelop the Site with a Multi-Story, Mixed Use building on top of a public parking garage with other associated site improvements consisting of the following (the "Project" or "Project Improvements"). Multi-Story, Mixed Use building shall consist of the following:

(1) A Two Story Public Parking Facility/Commercial Space. The lower two stories of the improvement shall include a two-story, approximately 335 space parking facility with a portion of the first story and second stories set aside for commercial space with the following characteristics:

(a) Public Parking Facility. The Public Parking Facility shall accommodate approximately 335 daytime and overnight public parking spaces, as more specifically provided in Section 4.04 (a) and (b).

(b) Commercial Space. The commercial space shall be approximately 5,664square feet built adjacent to the partially underground parking facility along River Street.

(2) Residential Space. The residential space (Residential Space) shall consist of four (4) stories (stories 3, 4, 5 and 6) and consist of approximately 194 residential units located on top of the Public Parking Facility and commercial space.

(3) Public Improvements. The Public Improvements shall include, but not be limited to, the Public Parking Facility and all required site preparation, offsite electric improvements, and public street (including the proposed IL Rt. 25 turn off lanes and any geometric changes to IL Rt. 25 required by the Illinois Department of Transportation (IDOT)), sidewalk, right-of-way and offsite streetscape improvements identified more specifically in the document attached hereto and incorporated herein by reference as **Exhibit H** (the "Public Improvements") to be owned and operated by the City, but shall not include the costs of onsite water, onsite storm sewer, onsite sanitary sewer, onsite electric and all other improvements necessary to construct the Residential Space and Commercial Space, which improvements are hereinafter referred to as Private Improvements. The parties agree that proration of some costs shall be necessary as specifically identified in this Agreement. No offsite, water, sanitary collection or storm sewer system improvements are needed as part of this Project, except those costs required to connect to public utilities located in public right-of-way immediately adjacent to Redevelopment Site.

E. In connection with the Project, Developer shall cause a subdivision of real property, re-conveying to the City a portion of the redeveloped property once it is completed consisting of the Public Parking Facility and certain utility and/or other easements. Additionally, the City shall be granted those rights, and shall be subject to those conditions relating to the operation and maintenance of the Public Improvements as described in this Agreement.

F. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, (65 ILCS 5.11-74.4-1) as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

G. In order for the Project to be economically feasible for the Developer and to stimulate and induce the redevelopment of the Redevelopment Site, the City has agreed to fund the land acquisition costs and to fund some of the Project costs, and pursuant to the Act. The following ordinances have been adopted by the City establishing the existing TIF districts that affect the Redevelopment Site:

Ordinance No. 89-80, "Ordinance Approving the Riverfront Tax Increment Redevelopment Plan and Riverfront Redevelopment Projects,"

Ordinance No. 89-81, "Ordinance Designating the Riverfront Tax Increment Project Area," and

Ordinance No. 89-82, "Ordinance Adopting Tax Increment Financing for Riverfront Redevelopment Project," all properly adopted by the City Council of the City of Batavia on December 4, 1989.

Ordinance No. 04-09, being an Ordinance Approving the Downtown Tax Increment Redevelopment Plan and Riverfront Redevelopment Projects;

Ordinance No 04-08, being an Ordinance Designating Downtown Tax Increment Project Area; and

Ordinance No. 04-10, being an Ordinance Adopting Tax Increment Financing for Downtown Redevelopment Project," all properly adopted by the City Council of the City of Batavia on March 15, 2004; and

These ordinances, which have been extended by law, and all other related ordinances adopted in connection herewith, are referenced herein as the "Existing TIF Ordinances".

H. The Redevelopment Site is located partially within both the Riverfront Tax Increment Project Area and Downtown Tax Increment Project Area referred to above. In order for the Project to be economically feasible for the Developer and to stimulate and induce the redevelopment of the Redevelopment Site, the City has agreed to use its best efforts to disconnect the Redevelopment Site from the existing TIF districts and create a new Tax Increment Project Area (hereinafter "Redevelopment Area"), Plan and Project under the applicable statutes. Said creation will withdraw the Redevelopment Site from the redevelopment areas in which it is now located and place it within the Redevelopment Area to be created. In the event City is unable to disconnect the Redevelopment Site from existing TIF districts and create a new Tax Increment Project Area, City shall reimburse Developer its reasonable costs incurred in connection with the Project.

I. For the purpose of paying a portion of the Project Costs, the City Council contemplates reimbursement of TIF reimbursable costs to the Developer in an amount of up to $16,000,000, excluding the costs of bond issuance, but not exceeding all of the TIF eligible costs as more fully provided herein.

J. Mayor and the City Council have determined that the Project on the Redevelopment Site will spur on economic growth in the downtown area, creates jobs and stimulate the local economy and without the financing provided by the City, the Project would not be economically viable and the redevelopment would not occur.

K. This Second Amended and Restated Redevelopment Agreement (1 North Washington Ave) between 1 N. Washington, LLC, an Illinois Limited Liability Company (hereinafter the "Developer") and the City of Batavia, an Illinois Municipal Corporation (hereinafter the "City"), dated _____, 2019, is made as of the _____date of January _, 2019 (hereinafter the "Effective Date").

L. WHEREAS, a Redevelopment Agreement (1 North Washington Ave) between 1 N. Washington, LLC, (hereinafter the "Redevelopment Agreement" or "RDA") was approved by the City and Developer, and the RDA was amended and restated in its entirety by the City and Developer on January 3, 2018, this Second Amended and Restated Redevelopment Agreement supersedes the previous versions of the Agreement, and all references to RDA shall mean the RDA as herein amended and restated;

M. WHEREAS, the City has satisfied the following obligations of the RDA; Section 2.07 approval of zoning, subdivision, preliminary engineering and site plan; Section 2.02, the Acquisition of the Redevelopment Site Parcels; Section 2.3 the establishment of a new TIF district; Section 2.04 the demolition of the structures on the Redevelopment Site, except for the parking garage and associated upper parking lot, the church parking lot, miscellaneous stairways and retaining walls, the Service Master foundation and portions of foundations from the former Fisher, Frydendall and church buildings;

N. WHEREAS, this Amendment is triggered by Section 2.06 of the RDA, providing that the parties shall make a joint decision whether to proceed or terminate the Agreement if the environmental conditions disclosed by the environmental testing require cleanup exceeding the cost of $350,000; and

O. WHEREAS, the environmental testing has revealed the presence of substances that require environmental cleanup and a No Further Remediation Letter ("NFR Letter") from the IEPA exceeding the cost of $350,000; and

P. WHEREAS, the City and the Developer have been performing the RDA and intend to continue to perform the RDA subject to the terms and conditions of this Amendment to the RDA stated herein below.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

The recitals set forth above are incorporated herein as material components of this Second Amended and restated Agreement.

ARTICLE I
Duties and Covenants of Developer

1.01 Duties of Developer. It is acknowledged and agreed that the Project, this Agreement and all Duties of Developer under this Agreement are conditioned on the "Contingencies" as provided and defined in **Article III Contingencies** below. Notwithstanding such Contingencies, Developer shall, in its reasonable discretion proceed with all of the *"Preconstruction Duties"* (hereinafter described in Sections 1.02, 1.03 and 1.04), so that upon the satisfaction or written waiver of the Contingencies to its performance, construction of the "*Improvements"* (hereinafter defined) may commence as soon as reasonably practicable. The foregoing to the contrary notwithstanding, Developer retains the right, from time to time, to terminate the Agreement as provide in Section 3.04.

1.02 Duties of Developer Prior to Acquiring the Redevelopment Site. For purposes of this Agreement, *Duties of the Developer Prior to Acquiring the Redevelopment Site* shall consist of the following:

(a) Zoning & Preliminary Plan. The Developer has submitted applications for adjustments to the existing Planned Development Overlay District pursuant to 3.103C(2) of the City Zoning Code, previously deemed suitable and appropriate for the Redevelopment Site and as set forth on Exhibit "I" (the "Preliminary Plans"), and has obtained the zoning and other approvals to support the Preliminary Plan approvals and shall submit such additional materials required for City approval of the Final Plans and permits illustrating connections to City public utilities, the grant of easements benefiting City for same, the grant of easements that are necessary for utilities and other purposes.

(b) Pro Forma. The Developer has previously submitted on June 22, 2015, as amended, from time to time a pro forma estimate of building costs, financing and financing gaps, and may supplement the pro forma prior to acquisition of the Redevelopment Site. The pro forma shall be considered a material component of this Redevelopment Agreement, but shall be not attached as an exhibit or be considered a public document; and the pro forma and any and all references to and recitals of the pro forma information and any written review, analysis or report by the City or third party professional consultant retained by the City, shall be protected from disclosure to the public pursuant to Section 7(g) of the Freedom of Information Act (5 ILCS 140/7(g)). The City's agreement and obligation to provide the financing of the Project is made in reliance on the pro forma submitted by the Developer with the intention to make the Project economically feasible. The Developer has an obligation to seasonably update the pro forma to the City for any material changes that occur.

(c) **Drawings and Bidding**. Within ninety (90) days of the Effective Date, Developer shall complete or cause to be completed current budgets (the "Current Budgets"), based upon the approved Preliminary Plans. Provided the Current Budgets are acceptable to the Developer, in its sole discretion, the Developer shall, within one hundred fifty (150) days thereafter, prepare necessary bid drawings for the construction of the Project. The Developer shall then solicit and receive bids for all the components of the Project and submit for permit within ninety (90) days thereafter after expiration of the time set forth for preparation of the bid drawing. Provided the bids are acceptable to the Developer, then Developer shall promptly notify the City in writing of its intent to proceed with the Project (the "Notice to Proceed").

(d) **Financing**. Developer represents that Developer has previously applied for and received a preliminary loan proposal from Fifth Third Bank (the "Lender"). Developer shall promptly submit the signed Environmental Indemnification Agreement to the Lender for approval after the Effective Date in the form that is attached hereto and incorporated herein by reference as Exhibit O. In conjunction with the submittal of the Environmental Indemnity Agreement, Developer shall submit a current loan application to Lender. Immediately after

receiving the bids and providing the Notice to Proceed, Developer shall diligently proceed to finalize the loan documents.

(e) **Permit Application**. Concurrently with the submittal of the Final Plans, Developer shall file an application and the documentation necessary for issuance of all necessary building and related permit(s).

1.03. Acquire Redevelopment Site from City. Subject to the *Contingencies Precedent to Acquisition* identified in Section 3.02(a) and 1.04(b) below, following the Notice to Proceed and upon Developer's request, City shall schedule a closing date not later than thirty 30) days from the date of the Notice to Proceed, which date may be extended by thirty (30) days as necessary and appropriate to accommodate any time required to resolve title issues, to finalize financing, and related matters, and Developer shall acquire the Redevelopment Site from the City for the sales price of $10.00 (Ten Dollars and No Cents), pursuant to the terms and provisions of the Purchase Agreement in substantially the same form as the agreement attached hereto as **Exhibit J**.

1.04. Duties of Developer Prior to Construction of the Project. The Developer shall perform the following *Duties of Developer Precedent to Project Construction* within the time frames stated below for each item after Developer's acquisition of the Redevelopment Site:

(a) Utility Easements and Plat of Consolidation. The Plat of Consolidation has been approved and recorded. Prior to or simultaneous with the Permit Application, Developer shall seek from the City approval of connections to City public utilities and grants of easements benefiting City, necessary for utilities and other purposes, which approval shall not be unreasonably withheld. Developer shall cooperate with City to ascertain and identify those portions of the Project which are related to the Public Parking Facility and other Public Improvements for purposes of satisfying the City's bonding requirements.

(b) Secure Construction Financing for the Improvements. Within ninety (90) days of Developer completing bid drawings, Developer shall use its best efforts to secure a binding loan commitment from a lender of its choosing at interest rates and terms acceptable to Developer. If Developer has completed Construction Plans for the Project, the 90 day time period may be extended for no more than 90 additional days.

(c) Finalize Construction Contracts. Not later than sixty (60) days after Developer receives a building permit for construction, Developer shall finalize and issue the initial contracts for construction of the Project or obtain from the project general contractor guaranteed pricing of general project construction components and provide copies of same to the City Community Development Department.

(d) Surety for Performance and Payment. As a condition to the issuance of the permit(s) for all improvements not otherwise defined as Public Improvements the Project and issuance of Bonds, Developer shall post a letter of credit or bond in the amount equal to 115% of estimated construction costs as surety for performance and payment of constructing the Project Improvements as required by the Batavia Municipal Code in the form attached hereto as **Exhibit L**. The surety for the Public Improvements may be separate from the surety for the balance of Project costs. The City shall authorize the reduction of the surety from time to time as the Project progresses and construction components are completed to the satisfaction of the City, and provided the Developer shows proof of payment to contractors and/or subcontractors for the subject work, accordingly. Reductions shall be requested no more often than monthly and shall be limited to completed components of the construction. Components shall be considered completed though punch list items remain to be addressed.

(e) Insurance. As a condition to the issuance of the permit(s) for the Project, and prior to the issuance of a building permit, Developer shall provide proof of insurance in an amount reasonably acceptable to the City Attorney, naming the City, its employees, officers and agents as named insureds in the amount of 115% of the estimated cost of building completion until the Project is completed.

(f) Condominium Declarations and Covenants Affecting the Development Site. The parties shall agree upon a set of condominium declarations and covenants that apportion the relative rights and duties of the parties to maintain and manage the various elements within the Project to be recorded simultaneously with recordation of the Condominium Plat. Said documentation shall contain provisions which prevent amendment to said declaration of the respective rights and duties of the parties unless mutually agreed upon by the parties, including property owners' associations that may come into existence in the future. The covenants shall be consistent with the public nature of the Parking Facility, and no provisions shall be included or allowed to be included in the future that would jeopardize the tax-exempt nature of the bonds the City will use to fund the Public Parking Facility improvements as long as the bonds are outstanding. Developer may, but is not required to, include all of the residential units as condominium units at any point in time.

1.05. Construction Duties of Developer. After the Developer has completed and satisfied all of the *Duties of Developer Prior to Project Construction* and obtained financing, and issuance of a building permit and other approvals for construction of the building are in place, the Developer shall perform the following:

(a) Begin Construction of the Project. Developer shall commence construction of the Project within ninety (90) days of the issuance of the building permit in accordance with, and subject to: (i) this Agreement, (ii) the applicable local, state and other laws and regulations ("Applicable Laws"), (iii) the Final Plans and specifications; and (iv) the Environmental Indemnity Agreement;

(b) Demolition. If the City has not already completed the Demolition, the Developer shall promptly and diligently obtain bids for the Demolition, to be approved by the City Public Works Director, submit a demolition permit application and proceed to Demolition when the permit is approved, subject to City's obligation to reimburse Developer therefore.

(c) Environmental Cleanup and Excavation. In order to streamline and contain the cost of the environmental cleanup and excavation, the Developer shall undertake the environmental cleanup and excavation at the same time as Demolition. As the City is responsible for the cleanup cost and demolition costs, and the Developer is responsible for the excavation cost, the process of demolition, cleanup and excavation and responsibility for the demolition cleanup and excavation costs shall be as follows:

(i) Surety. Before initiating the environmental cleanup, demolition and excavation the Developer shall submit its performance and payment surety in form that is reasonably acceptable to the City for the excavation, which bond cost shall be a reimbursable expense.

(ii) Bidding. Developer shall bid the demolition work and environmental cleanup work required by the Remedial Action Plan with the advice of the City Public Works Director and accept the lowest bidder qualified and able to meet Developer's construction schedule, with the consent of the City Public Works Director. Any additional work required by the identification of Hazardous Substances and additional remediation determined by the IEPA to be necessary shall be approved by change order mutually acceptable to the Developer and the City and paid for by the City.

(iii) Remedial Action Plan. The City's environmental consultant, (the "Environmental Consultant") shall identify the areas of contamination that must be removed pursuant to the Remedial Action Plan ("RAP") obtained by the City and Developer shall haul off the contaminated soils as directed by the Environmental Consultant consistent with the RAP and the Environmental Indemnity Agreement.

(iv) Additional Contamination. If the Environmental Consultant identifies any contamination that was not previously identified in the Environmental Consultant's reports, the Developer

shall comply with the IEPA and the Environmental Consultant regarding such additional contamination and remove such additional contamination at City's sole cost and expense.

(v) Excavation. Once the demolition is complete and hauled off and the Environmental Consultant has determined that the contaminated areas have been sufficiently and completely hauled off the Redevelopment Site in compliance with the Remedial Action Plan, the remainder of the soils on the site may be excavated by the Developer, hauled away off-site and disposed as the Developer determines in its sole discretion, subject to City's reimbursement obligations.

(d) Completion of the Public Parking Facility. Developer shall diligently proceed to complete the improvements and shall substantially complete the Public Parking Facility within eighteen (18) months from the date of the issuance of the building permit. Substantial completion of the Public Parking Facility for purposes of this Section means that the construction is completed, but for punch list items and the one-year maintenance obligations and a request for a certificate of occupancy has been submitted.

(e) Completion of the Project. Subject to the provisions of Paragraph 5.06(d)(x), the Developer shall diligently proceed to complete all of the improvements and shall substantially complete the Project, including all remaining Public Improvements, within twenty-four (24) months after the date of substantial completion of the Public Parking Facility as determined by the City Engineer. Substantial completion of the Project means the constructions is completed, but for punch list items, and a request for a certificate of occupancy permit has been submitted for the residential portion of the Project ("Project Completion").

1.06. Developer's Standard of Performance. Developer shall perform all such duties enumerated in Sections 1.01 through 1.05, with the level of care, competence, judgment, diligence and performance which can reasonably be expected of a real estate development firm in the greater metropolitan area of City of Chicago having experience in the type of development required pursuant to the Project Plan.

1.07. Disruption of Public Use or Public Property. Developer shall undertake the completion of the Project in a manner that is in the best interest of the Project, while acknowledging that the Redevelopment Site is bordered in part by public streets and walks. Developer shall perform all acts reasonably necessary to provide for continued public use of such affected sidewalks and streets without delaying the Project. Developer shall not disrupt the public use of City streets, City sidewalks and other City property without prior approval by the City of a reasonable detour plan, which approval of the City shall not be unreasonably withheld, conditioned or delayed, and Developer shall use its diligent, good faith and reasonable efforts, at all times and in a manner consistent with the Project Plan, to minimize the disruption to the public, and to obtain any approvals required of the State (IDOT) affecting roads under State jurisdiction such as Washington Street and Wilson Street, both of which function as part of Illinois Route 25 with the cooperation of the City. Both parties acknowledge that some road closure will be necessary for at some time or times during the construction of the Project that may extend for weeks or months, but the parties shall coordinate together to minimize those closures and, specifically, to minimize any closures of that portion of the roads that are part of Illinois Route 25.

1.08. Prevailing Wage Act. Developer hereby acknowledges that the Public Improvements must be completed in compliance with the Prevailing Wage Act 820 ILCS 130/.01 et seq. Developer shall insure that every contract and subcontract, purchase order and invoice (in the event there is no written contract) must contain a written requirement that all work done under such contract, subcontract, purchase order or invoice must be done in compliance with the Prevailing Wage Act, including the obligation to pay not less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work on the Public Improvements and in compliance with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. Any failure to timely submit certified monthly payroll reports shall be cause for the withholding of payments otherwise due under this Agreement until compliance with the reporting requirements is achieved. Any bond or other surety furnished

under this Agreement shall include such provisions as will guarantee the faithful performance of this prevailing wage clause. Compliance with the Prevailing Wage Act, to the extent that it applies, shall be the Developer's obligation, and the Developer shall indemnify and hold harmless the City from and against liabilities that might attach for non-compliance. It is acknowledged and agreed that the provisions of this Section 1.08 apply only to the construction of the above described Public Improvements, and not to the maintenance, repair and or replacement of same following initial construction except as required by law for the Public Improvements.

1.09 Plat of Condominium and Declaration of Covenants. Not later than sixty (60) days from the acknowledgment of substantial completion, Developer shall submit to the City a Plat of Condominium and Declaration of Covenants covering the Redevelopment Site, to separate out from the balance of the Site, the Public Parking Facility and its appurtenances, consistent with this Agreement, which approval shall not be withheld, providing that it is in substantial compliance with the terms of this Agreement, and Developer shall record the Plat of Condominium and Declaration of Covenants within ten (10) days from written approval of the City.

1.10 Transfer of Title to the Public Parking Facility. Not later than thirty (30) days after the recording of the Plat of Condominium for the Redevelopment Site, and provided all payments due by the City to date have been made to the Developer, the Developer shall transfer fee simple title of the portion of the Redevelopment Site consisting of the Public Parking Facility and its public appurtenances to the City. Said transfer of title shall in no way terminate or lessen Developer's obligation to complete all duties in regard to the Public Parking Facility under this Agreement, including satisfaction of the one-year maintenance requirements.

1.11 Submittal of Eligible Cost Reimbursement Documentation. During the demolition, environmental cleanup and construction of the Public Parking Facility, but no more frequently than every thirty (30) days, and after substantial completion of the Public Parking Facility, the Developer shall submit (or shall have submitted as in the case of the Prevailing Wage Act) all of the necessary documentation substantiating the Eligible Reimbursement Costs for that particular part of the Project, as set forth in Section 8.06, including, but not limited to, all of the following:

(a) Receipts & Documentation of Eligible Costs. Documentation and proof of costs incurred and payment for Eligible Project Costs, including invoices and other evidence of charges, canceled checks, receipts and other proof of payment and all partial and final lien waivers for each respective project portion.

(b) Certified Payroll Records. Certified payroll records for every employed individual working on the Project as required by the Prevailing Wage Act during the term of the work delivered to the City Finance Department at the end of each month for the Public Improvements, unless otherwise required by the Prevailing Wage Act.

1.12 Post Project Completion Duties.

(a) Public Improvements One-Year Maintenance. Following the issuance of the Certification of Completion for the Public Improvements that have been constructed, the Developer shall submit a Letter of Credit or reduce the performance and payment surety to the one-year maintenance amount for the Public Improvements, and Developer's sole obligation relative to said maintenance shall be to provide a one-year warranty for the construction of the Public Improvements. The Developer shall repair the Public Improvements as may be contemplated by the Batavia Municipal Code for the one-year period (sometimes referred to as a "One-Year Maintenance Obligation"); provided, however, notwithstanding anything to the contrary contained in any provision of the Batavia Municipal Code, the Developer's One-year Maintenance Obligation shall not be construed to obligate Developer to maintain, operate, supervise, manage, clean, inspect, remove snow, ice, debris, garbage or provide appropriate signage for the Parking Facility. All such obligations shall be and remain the obligation of the City.

(b) After Project Completion. After the Project is completed and as a condition of the issuance of occupancy permits, the Developer shall provide post completion surety in the form of a bond or other insurance in

favor of the City providing in the alternative for replacement of the building or direct payment to the City of the outstanding bond payments in the event of destruction of the building ("Post Completion Surety"). Said Post Completion Surety shall provide for notification to the City in the event of nonpayment, nonrenewal or cancellation, shall reflect the City as an additional insured and shall include an endorsement assigning applicable insurance proceeds in the event of a covered loss only to the extent of the value the City is entitled to receive on an annual basis.

ARTICLE II
Duties and Covenants of City

2.01 Duties and Covenants of City. It is acknowledged and agreed that the Project, this Agreement and all Duties of City under this Agreement are conditioned on the "Contingencies" as provided and defined in **Article III Contingencies** below. Notwithstanding such Contingencies, City shall cooperate with the Developer to move the development process along so that upon the satisfaction or written waiver of the Contingencies, construction of the *"Improvements"* (as herein defined) may commence as soon as reasonably practicable. City covenants, represents and warrants to Developer that it has authority under Illinois Statutes to execute, deliver and fully perform the terms, provisions, and obligations of City under this Agreement.

(a) Best Interests of the Project. To the extent that the City may act without sacrificing the interest of the Public, the City covenants and agrees to act reasonably in a manner which is not against the best interest of the Project, providing that the safety and convenience of the public using adjoining public streets and sidewalks is protected.

(b) Further the Timely Completion of the Project. To the extent that the City may act without sacrificing the interest of the Public, the City agrees to use its diligent, good faith and reasonable efforts, at all times and in a manner consistent with the Project Plan and its obligations to the community, to further the interests of the timely completion of the Project in accordance with the terms and provisions of the Project Plan.

2.02. Acquisition of Redevelopment Site Parcels. The City has acquired title to the Fisher Property and the Frydendall Property and obtained a release or otherwise extinguished the 8 N. River and 109 E. Wilson Easements.

2.03 New TIF District. The City has completed the process of disconnecting the Redevelopment Site from the existing TIF districts, and has established a new TIF district for the Redevelopment Site.

2.04. Demolition of Structures. The City may complete demolition of some or all buildings and structures on the Redevelopment Site, but the City is not required to complete the Demolition prior to the transfer of title. Regardless of whether the City demolishes the buildings and structures or the Developer demolishes the buildings and structures, the City shall be responsible for the demolition cost, provided that the City approves the Developer's demolition bid(s), which approval shall not be unreasonably withheld.

2.05 Environmental Testing. The parties acknowledge that the City has satisfied the obligation of environmental testing. The parties agree that any environment testing recommended by the Environmental Consultant for the purpose of obtaining an NFR Letter shall be done at the City's sole cost and expense, provided that no additional environmental testing will be done without the City's approval, which approval shall not be unreasonably withheld in keeping with this Amended Agreement.

2.06 Environmental Clean Up. The City shall pay the cost for the Developer to complete the environmental cleanup pursuant to the RAP, the IEPA requirements and the direction of the Environmental Consultant, provided that the City timely submits all documents requested by IEPA necessary to obtain all approvals and issuance of the NFR. ("City Environmental Costs")

2.07 Approval of Zoning, Subdivision, Preliminary Engineering and Site Plan and other Entitlements. The City has satisfied its duties and covenants to approve all applications for zoning, subdivision and preliminary engineering and site plan approval for the Project that are complete and all applications that are in compliance with the City Codes, and other local, state and federal regulations that are applicable, including any additional submittals that are required for Amendment to the Planned Development Overlay District.

2.08. TIF Financing and Cost Reimbursement. The City hereby acknowledges and agrees that, according to the Developer's Pro Forma, and updates thereto, analysis, but for the provision of financing by the City, the Project would not be economically feasible. Subject to confirmation of Developer's Pro Forma analysis, City shall issue bonds to be retired, according to a repayment schedule as mutually agreed by the Parties, as a general obligation of the City in the gross amount not to exceed $16,000,000 (the "Bond Reimbursement Amount"), providing that the bonds shall be retired from the tax increment generated by the Redevelopment Site for the TIF Eligible Improvements not to exceed the Maximum Reimbursement Amount, including, but not limited to the following:

(a) Any geotechnical investigation and environmental assessment not previously completed by City but necessary to comply with State or Federal regulations in order to construct and occupy project in accordance with approved plans;
(b) Any on-site utility relocation, abandonment or relocation, clearing and grubbing, building demolition, earthwork, drainage, soil erosion and other miscellaneous site preparation measures;
(c) If necessary, Developer's cost to construct-on-site, and, if necessary, off-site public water, sanitary and storm sewer main infrastructure improvements and/or upgrades and extensions necessary to service the subject development as follows;
(d) Streetscape enhancements and other required improvements within the public rights-of-way along State Street, Washington Street and Wilson Street of a scope and character similar to what has been constructed along Wilson St. from Batavia Ave. eastward to Island Ave. and along Houston St. from Batavia Ave. eastward to Island Ave;
(e) Multi-level concrete and masonry public parking facility;
(f) Construction Interest, paid until construction loan is converted to long term loan;
(g) City permits application and review fees;
(h) City-originated impact and connection fees;
(i) Professional consulting fees, including survey, engineering, architecture, landscape architecture, land planning and design and legal incurred in connection with the Project;
(j) Reasonable loan and equity raise fees, letter of credit fees, bond fees; and
(k) City-required off-site electric utility infrastructure upgrades and/or extensions, building, utility and other associated fees.

2.09. Conveyance of the City Property ("Redevelopment Site"). From and after the receipt of the Notice to Proceed, the City shall promptly and diligently proceed to convey fee simple title of the property that makes up the Redevelopment Site to Developer in accordance with the terms and provisions of the *Purchase and Sale Agreement* attached hereto as **Exhibit J** and the terms of this Agreement.

2.10. Approval of Engineering Plans and Specifications. City has satisfied its duty to review and approve the engineering plans and other technical drawings and submissions for the Project in compliance with the City Codes, and other local, state and federal regulations that are applicable and which conform to sound engineering principles, and the City shall approve the Final Plans that are in conformance therewith.

2.11. **Bond Issuance**. After the Developer has posted the performance and payment surety (per Section 104(g)), the City shall immediately diligently proceed to issue the bonds in the gross amount not to exceed $16,000,000. The City, in its sole discretion, may initiate two or more bond issues, including: 1) bond issue(s) designed to be tax-exempt which will be limited to the reimbursement of only those TIF Eligible Improvements that are not considered to be private activity bonds or which would result in the making of private payments in violation of the tax

exempt nature of the bonds ("Tax Exempt Bonds"); and 2) other bond issue(s) that may or may not be considered tax exempt ("Additional Bonds"). The City shall cooperate with the Developer to provide assurance to the Developer's lender in regard to the bond issue, and the City shall cooperate with the Developer and Developer's lender in regard to the timing of the bond issue.

2.12 Issuance of Permits for Improvements. City shall process, review and approve in a timely fashion, in keeping with its usual and customary practices, all applications for permits necessary for construction of the Project. Developer acknowledges that a full City review of building plans reasonably takes approximately ninety (90) days from submittal of complete, code-compliant materials.

2.13. Utility Connections. City shall authorize (pursuant to approved engineering plans) offsite electric work and all on-site water lines, sanitary and storm sewer lines and electric connections constructed on the Property to City utility lines existing on the Property or near the perimeter of the Property, and the offsite and onsite electric work shall be done or caused to be done by the City. Developer shall comply with all City Code requirements and other local, state and federal laws and regulations for such utility connections.

2.14. Fees. In exchange for the provision of more parking spaces in addition to the parking spaces originally proposed by the Developer, the City shall not charge the applicable zoning, subdivision, building permit, engineering, utility connection, impact fees, inspection and all other fees to the Developer that would otherwise be charged for the Project, and the City shall rely upon the excess tax increment, if any, to cover those usual fees.

2.15. Certification of Completion. Upon substantial completion of the construction and appropriate inspection and testing, if required, in keeping with City Code and other local, State and other applicable requirements, in accordance with the Project Plan, the City, through its Engineer or Building Official, shall promptly, at Developer's request, furnish Developer with a written Certification of Completion, subject to the One-Year Maintenance Obligation for the Public Improvements. The Public Improvements may be certified as complete before the remaining, private improvements are completed.

The Certification of Completion shall be in such form as will enable it to be recorded, at the option of the Developer. City shall respond to Developer's written request for a certificate of completion within twenty (20) business days after City engineer's receipt thereof, either with the issuance of a certificate of completion, or with a written statement indicating with specificity and particularity how Developer has failed to substantially complete the construction of the Project in conformity with Project Plan. If City requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a certificate of completion for the particular Construction Component upon compliance with City's response.

2.16 Reimbursement of Developer TIF Eligible Improvements. The City shall make reimbursement payment(s) to the Developer for the TIF Eligible Improvements up to the Bond Reimbursement Amount subject to the provisions of Section 3.03(c) as follows, to wit:

(a) Ongoing Reimbursement of TIF Eligible Expenses. Beginning no sooner than sixty (60) days after the commencement of construction, the Developer may submit the documentation and requests for reimbursement of the actual TIF eligible costs incurred by the Developer, which submittals may be made no more frequently than monthly and may be made for no less than $10,000 for each request, and the City shall reimburse the Developer for all of the actual costs incurred for work completed through the date of the submittal up to the Bond Reimbursement Amount as provided in paragraph 2.08, less bond issuance costs, less ten percent (10%) retainage, within thirty (30) days from the submittal by the Developer of all Eligible Cost Reimbursement Documentation in support of the request, providing that the City shall not reimburse more than the Bond Reimbursement Amount, less the retainage, until the conditions in subsection 2.16(b) below are met; and

(b) Release of Retainage. Within sixty (60) days after the later of the issuance of the occupancy permit for the Public Parking Facility, conveyance of the Public Improvements and submittal by the Developer of all Eligible Cost Reimbursement Documentation, whichever is later, the City shall release the Retainage attributable to the Public Parking Facility.

(c) Release of Remaining Retainage. Upon substantial completion of the remaining improvements and commencement of the one-year maintenance warranty period, the remaining Retainage shall be reimbursed up to the Bond Reimbursement Amount ("Final Payment").

(d) Back up Special Service Area. The Developer hereby agrees to allow the City to establish a backup Special Service Area (SSA) after the Developer takes title to the Property, which SSA will encompass the Redevelopment Site, provided that the sole purpose of the SSA is to pay the difference between the tax increment generated from the Project and the bond payments when those payments are due for the bonds issued to defray the costs of the Public Improvements. The City will provide the Developer notice of the establishment of the SSA and opportunity to review the SSA Ordinance before it is approved and notice of the City's intent to levy the SSA tax before an ordinance approving a levy is approved. The ordinance shall be in substantial conformance with the document attached hereto and incorporated herein by reference as Exhibit K, provided that no provisions shall adversely affect the tax exempt portion of the bonds that are issued. Subject to the conditions stated herein, the City may, at the City's reasonable discretion, begin to levy and collect SSA taxes in sufficient amounts to pay the difference between the tax increment generated from the Project and the debt service payments, subject to the gap payment provisions in Section 5.04 and the true up provisions in Section 5.05. In no event shall City be allowed to establish a special service area that gives City the authority to levy in excess of fifteen dollars ($15.00) per one hundred dollars ($100) of assessed valuation annually. For purposes of the backup Special Service Area, the difference between the tax increment generated from the Project and the debt service payments when those payments are due shall include the reduction in funds available to pay the debt service resulting from any payments the City is obligated to make to the School District for the school age children residing in the Redevelopment Area, and the increment generated from the Project shall be reduced by the amount of reimbursement due or paid to the School District accordingly in determining any shortfall between the tax increment generated and the debt service payment obligations. The Special Service Area and gap payment obligation may also be used to fund any premiums necessary to maintain insurance or bonding of the Private Improvements, but only if the Developer or condominium association fails to maintain the insurance or bonding, as provided in Section 4.03(b) below.

2.17. Approval of Plat of Condominium and Declaration of Covenants. City shall process for approval the Plat of Condominium and **Declaration of** Covenants necessary for the Project to be completed in accordance with the mutual intentions of both parties and Project Plans, including but not necessarily limited to those associated with the City's conveyance to Developer of all properties necessary for the Project and the Developer's conveyance of the real estate to the City in connection with the Public Parking Facility, which approval shall not be withheld, providing the covenants are in substantial compliance with the provisions of this Agreement.

ARTICLE III
Contingencies / Termination Rights

3.01 Contingencies. Developer's and City's respective obligations under this Agreement are subject to satisfaction and/or waiver of various contingencies.

3.02 Developer Contingencies. The Developer shall not be obligated to acquire the property that makes up the Redevelopment Site until the following *Contingencies Precedent to Transfer of Title* have been met:

(a) Bidding. The bids obtained by the Developer are acceptable to the Developer;

(b) Notice to Proceed. Developer has given the Notice to Proceed, which shall not be withheld once the construction financing and bids have been accepted.

3.03 City Contingencies. The City's obligations to continue through the various stages of development are as follows:

(a) Pre-Title Transfer. The City shall not be obligated to proceed with this Agreement and transfer title of the Redevelopment Site to the Developer until the following *Conditions Precedent to Transfer of Title* have been met:

(i) New TIF Qualification. The Redevelopment Site has qualified for tax increment financing as a new TIF district on its own accord;

(ii) Environmental Remediation. The City has determined that any environmental remediation necessary to complete the Project is not economically prohibitive, the Parties are not unable to reach accord on said issue per Section 2.05, and the Developer has submitted final design drawings to the City for review and has given the City a written Notice of Intent to Proceed;

(iii) Proof of Public Benefit. The City has determined, based on the studies, analyses and information provided by the Developer and/or from other sources, that the parking is adequate for the purposes of the Project and the parking and all other benefits to the public justify the use of TIF funds for the Project.

(b) Pre-Bond Issue. The City shall not be obligated to issue the bonds as contemplated herein until that Developer has posted the performance and payment surety.

(c) Pre-Construction. The City shall not be obligated to approve construction of the Project on the Redevelopment Site until the following *Conditions Precedent to Construction* have been met:

(i) Plat of Consolidation. The Developer has submitted a plat of consolidation of the parcels making up the Redevelopment Site for approval and the parcels have been consolidated into one zoning lot as provided in Section 1.04(a).

(ii) Utility Easements and Connections. Grants to the City of all easements for utilities, public access and other requirements have been approved and recorded and utility connections have been approved as provided in Section 1.04(a).

(iii) Final Approvals. The Final Plans have been approved as provided in Section 1.04(b).

(iv) Performance and Payment Surety. A letter of credit or bond has been posted in the amount of 115% of the estimated construction costs to secure the performance and payment of the construction of the Public Improvements as required in Section 1.04(g).

(v) Insurance. Proof of insurance meeting the requirements set forth in Section 1.04(h) has been submitted.

(vi) Declarations and Covenants. Completion of a set of condominium declarations and covenants that are agreeable to the parties which do not adversely affect the tax exempt nature of the bonds being used to finance the development of the Public Parking Facility as provided in Section 1.04(i).

(vii) Bond Issuance. The City has successfully issued the First Bonds which satisfy all the requirements for tax exempt bonds and the rates for the bonds issued are estimated to be economically feasible.

(viii) Tax Exempt Opinion. The City has obtained an opinion from bond counsel that the Tax Exempt Bonds described in Section 2.11 will qualify for tax-exempt status based upon the representation of the Parties as to the categorization and allocation of costs to be paid from the bond proceeds.

(ix) New TIF Establishment. The Redevelopment Site has been established by the City as part of a new tax increment financing district on its own accord, and the ordinances approving the Redevelopment Site as a new project area, approving the project plan in accordance with this Agreement and approving tax increment financing for the project area and the project plan in keeping with this Agreement have been duly passed and recorded

(d) Pre-Reimbursement to Developer. The City shall not be obligated to reimburse the Developer, and may hold back any reimbursement due the Developer, if any of the following conditions are not met:

(i) Plat of Condominium & Completion and Conveyance of Public Parking Facility. The final Plat of Condominium and Covenants have been finalized and recorded and the Public Parking Facility has been completed and deeded back to the City as required by Sections 1.09 and 1.10;

(ii) Submittal of Eligible Cost Reimbursement Documentation. The documentation substantiating the Eligible Reimbursement Costs for which the Developer is seeking reimbursement has been submitted as required by Section 1.11.

(iii) No Default. The Developer is not in default of any material provision of this Agreement.

(iv) Ineligible Reimbursements. City shall not be responsible to make reimbursement payments to Developer to the extent costs proposed by Developer are for matters outside the parameters of the Act and/or the parties' agreements regarding items and categories properly paid for with tax exempt bond funds.

(e) Special Service Area. The City has established a special service area pursuant to Ordinance 17-21 encompassing the Redevelopment Site solely as a backup source to fund any gap between the ongoing tax increment generated by the Redevelopment Site and ongoing obligation to pay off the bonds issued to defray the costs of the Public Improvements when they become due and to retire the bond obligations in keeping with the mutually acceptable bond repayment schedule as provided in Section 2.08 and to fund any premiums necessary to maintain insurance or bonding of the Private Improvements if the Developer or condominium association fails to maintain the insurance or bonding, as provided in Section 4.03(b) below.

(f) Elective Gap Payments. If the City determines that an SSA tax levy is necessary to fund a Required Gap Payment as defined in Paragraph 4.03(c), the City shall give written notice to the Developer of its intention to levy on the special service area along with an estimate of the SSA levy estimated pursuant to subsection (d) above no sooner than October 15th and no later than November 1st of the year in which the levy ordinance is to be approved. If the City determines an SSA Tax levy is necessary to fund a required gap payment, the Developer may elect to make a gap payment ("Elective Gap Payment") directly to the City in lieu of an SSA levy as provided in Subsection (d) above, in which case the Developer must give notice in writing to the City of that election prior to November 30th. Said payment shall be made no later than the date the bond payment is due

3.04 Termination/Stop Order/Unwinding. The parties may terminate the Agreement by giving notice in writing to the other party as further provided herein below. The party desiring to terminate the Agreement shall give written notice of such intention to the other party, and if requested by the other party, attend a conference to explain the reasons for the request, so that the Parties together may discuss same and perhaps find reasonable solutions. Subject to the forgoing, the parties may terminate the Agreement under the following terms and conditions:

(a) Termination by Developer or City Prior to Acquisition. The parties shall have the right to terminate the Agreement without penalty prior to transfer of title of the Redevelopment Site to the Developer as follows:

i. By Developer. Developer may terminate the RDA for any reason, or no reason at all, prior to the Notice to Proceed , by written notice effective immediately, in which case the Developer shall not be entitled to reimbursement of costs from the City; provided that, if the cause for termination is the City's failure to satisfy the contingencies prior to acquisition, and the Developer has given the City prior written notice of the specific details of the failure, and a) the City has not cured the failure, if it is capable of being cured, within thirty (30) days of the date of the notice of the failure, or b) the City has not begun to cure the failure and diligently continued to work to cure the failure, if the failure is something that cannot be cured within thirty (30) days from the date of the notice of failure, the City shall reimburse the Developer for all of the costs incurred from the date of this Amendment to date of the notice of termination.

ii. By City. City may terminate the RDA for any reason or no reason at all by giving notice in writing to the Developer, with or without reason for the termination, and the City shall be liable for any cost of the Developer incurred from the date of the First Amendment to the effective date of the Notice of Termination, which Notice of Termination shall be effective within seven (7) days of the receipt of the Notice of Termination; provided that, if the cause for termination is the Developer's failure to satisfy the contingencies prior to acquisition, and the City has given the Developer a prior written notice of the specific details of the failure, and a) the Developer has not cured the failure, if it is capable of being cured, within thirty (30) days of the date of the notice of the failure, or b) the Developer has not begun to cure the failure and diligently continued to work to cure the failure, if the failure is something that cannot be cured within thirty (30) days from the date of the notice of failure, the City may terminate for cause effective from the date of the notice of termination without any responsibility to the Developer.

(b) Termination by the City for Default. The City may terminate the Agreement if the Developer is determined in default as provided Article IV

3.05 Stop Orders. The City shall have the right and authority to issue a written stop order if, at any time, the Developer fails to proceed in compliance with the approved Final Plans, the observance of sound engineering practices, any local, state or federal building code, rule or regulation applicable to the Project or the Prevailing Wage Act, providing that the City has previously given written notice detailing the issue of noncompliance and the Developer has been given the time allowed by the City Code to come into compliance, and the Developer shall immediately cease all such activity that is noncompliant until the noncompliance is remedied, subject to the provisions on notice and the ability to remedy the noncompliance as provided in Section 5.07. Notwithstanding the forgoing to the contrary, the Developer shall immediately comply with the stop order for any life/safety compliance issue.

3.06 Unwinding. Upon termination of the Agreement prior to commencement of construction of the Project for any reason: (i) City shall remit to Developer any surety or fees posted by Developer in connection with the Project and/or the Project Plan that has not been used, provided Developer is not in default; (ii) Developer shall convey the City Property back to the City, if applicable; and (iii) the Agreement shall be deemed thereafter null and void and of no further force or effect.

ARTICLE IV
Representations, Warranties and Covenants

4.01 Representations and Warranties of Developer. Developer does hereby represent and warrant to City as follows: (i) Developer is a limited liability company organized and validly existing and in good standing under the laws of the State of Illinois; (ii) Developer has the right and power and is authorized to enter into, execute, deliver and perform this Agreement; (iii) the execution, delivery and performance by Developer of this Agreement shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or breach of any provision contained any instrument or document to which either Developer is now a party or by which it is bound, including violations of the Prevailing Wage Act or other relevant labor laws; (iv) Developer is now solvent and able to pay its debts as they mature; (v) there are no actions at law or similar proceedings which are pending or threatened against Developer or the Property which might result in any material and adverse change to the Developer's financial condition, or materially affect the Developer's assets as of the date of this Agreement; (vi) the Developer has all government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) and franchise necessary to continue to conduct its business and to own or lease and operate its properties (including, but not limited to, the Developer's Property) as now owned or under contract or leased by it; (vii) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which the Developer is a party or by which it is bound; and (viii) there has been no material and/or adverse change in the assets, liabilities or financial condition of Developer; and (x) City is not a partner or engaged in a joint venture with Developer, its agents or assigns.

4.02 Representations and Warranties of City. City does hereby represent and warrant to the Developer as follows: (i) City is a municipal corporation organized and validly existing and in good standing under the laws of the State of Illinois; (ii) City has the right and power and is authorized to enter into, execute, deliver and perform this Agreement; (iii) the execution, delivery and performance by City of this Agreement shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or breach of any provision contained any instrument or document to which either City is now a party or by which it is bound; (iv) City is now solvent and able to pay its debts as they mature; (v) there are no actions at law or similar proceedings which are pending or threatened against City or the Property which might result in any material and adverse change to City's financial condition, or materially affect City's assets as of the date of this Agreement; (vi) City has all government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) and franchise necessary to continue to conduct its business and to own or lease and operate its properties (including, but not limited to, City's Property) as now owned or under contract or leased by it; (vii) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which City is a party or by which it is bound; (viii) there has been no material and/or adverse change in the assets, liabilities or financial condition of City and City is fully capable of providing Developer City Provided Funds; and (ix) it shall obtain and maintain all adequate insurance and surety requirements for the Public Improvements equivalent to insurance obligations of Developer.

4.03 Covenants of the Developer. The Developer hereby covenants to maintain and perform the following throughout the term of this Agreement, which term shall be ninety-nine (99) years, and which covenants shall extend to any successor in interest or assigns:

(a) Maintenance in Good and Habitable Condition. The Developer shall maintain the Project in good and habitable condition throughout the term of this Agreement

(b) Insurance or Bonding. The Developer shall at all times during the term of this Agreement maintain in full force and effect sufficient insurance or bonding, together or in the alternate, in excess of what might be required to be paid to other third parties:

(i) Replacement Cost. To cover the replacement in the event of a catastrophe or other event that destroys the building, whether in whole or in part, and/or

(ii) Bond Obligation. To cover the cost of making the bond payments when the bond payments are due and retiring the bonds if the building is not or cannot be reconstructed for any reason.

The Developer shall be obligated to use the insurance proceeds to reconstruct the building and to make it habitable again if the building is ever destroyed in whole or in part for whatever reason, unless the reconstruction of the building is not feasible or the Developer opts to making the bond payments when the bond payments are due and retiring the bonds. The Developer shall include in the condominium declaration a requirement that the condominium association, excluding the Public Parking Facility, shall maintain the insurance or bonding required in this Section 4.03(b) as a covenant running with the land if the Developer fails to pay for or maintain the insurance or bonding, and further providing that, if the insurance or bonding is not maintained, the premiums may be paid from the proceeds of the special service area taxes levied against the Redevelopment Site, and any such special service area taxes so used to pay for the required insurance or bonding will not be reimbursed to the Developer, as otherwise provided in 2.16(d).

(c) Required Gap Payments. The Developer shall be obligated to make cash payments to satisfy any shortfall in the combination of the increment, Elective Gap Payments and/or SSA levy to cover the payment of the City's bond obligations when they become due ("Required Gap Payments").

4.04 Gap Payment Reimbursement. The parties hereby acknowledge and agree that the City is authorized under the TIF Act to reimburse Developer for certain interest expense. Therefore, any Elective or Required Gap Payment made by Developer shall be reimbursed, together with interest thereon, to the Developer on an ongoing basis from any increment in excess of the amounts necessary to pay the bond obligations when they are due in subsequent years ("Gap Payment Reimbursement"). Any Gap Payment Reimbursement due to the Developer shall be paid from any increment remaining on a yearly basis after the payment of the currently due bond payment obligations, taking into consideration any obligation due the School District, ahead of any reimbursement due the Developer for TIF eligible costs or any other uses of the increment that is generated from the Property.

4.05 Joint Representations. The parties hereby undertake and agree to the following:

(a) Daytime Public Parking. The parties intend that all of the public parking spaces shall be available for the general public during daytime hours, subject to whatever reasonable restrictions the City may deem necessary and appropriate from time to time to ensure that the daytime parking is reasonably available in the best interest of the general public ("Daytime Parking Limitations"). The City shall have the right to impose charges for daytime parking, and has the right to restrict or use such spaces in a manner that the City deems in the public interest; and

(b) Overnight Public Parking. The parties intend that the City shall provide a minimum of 200 public parking permits designated for overnight parking for the general public who are a) residents in the Downtown Mixed Use ("DMU") District, including residents of the Multi-Story, Mixed Use building, and b) who do not have off-street parking at their own residences (hereinafter "DMU Residents"). The parties intend that permits for such overnight parking shall be available to DMU Residents for a monthly fee initially fixed at thirty dollars ($30) with annual increases of no more than five percent (5%) or the CPI (as defined in the TIC Act), whichever is less, in keeping with the City Code provisions on DMU overnight parking, if any. Said permits are intended to be made available on a first come, first served basis to be administrated by the City and such other reasonable restrictions the City deems necessary and appropriate from time to time. The parties intend that the overnight parking shall remain available for the Multi-Story, Mixed Use building residents on the same basis as overnight parking is available to the other DMU Residents throughout the term of this Agreement, subject to limitations that are necessary and appropriate to protect the tax exempt character of the bonds issued to finance the Project ("Overnight Parking Limitations"). The City

reserves the right to charge different amounts or make other arrangements for such parking, consistent with the public purposes of the City.

(c) **City Insurance**. The City recognizes the public benefit of the Public Parking Facility and will carry adequate property insurance to ensure prompt repair of any damages to the Public Parking Facility. In addition, City shall provide and maintain adequate general liability insurance that provides for losses in connection with the City's ownership, operation, maintenance and other responsibility for the Public Parking Facility. The City shall name the Developer, its successors and assigns as an additional insured thereon, to cover premises liabilities that arise in connection with the City's maintenance and other responsibility for the Public Parking Facility. The parties acknowledge that the provision of additional insured status in favor of the Developer pursuant to this section will provide the Developer only with protection from loss resulting from liabilities arising in connection with the City's ownership, operation, maintenance and other responsibility for the Public Parking Facility. For example, such additional insured status will not provide the Developer with coverage for property damage to the Public Parking Facility or any loss of use of the Public Parking Facility or coverage related to the diminution in value of the Private Improvements as a result of loss of use of the Public Parking Facility.

(d) **Priority Reimbursement.** The parties acknowledge and agree that the TIF Eligible Expenses shall be reimbursed pursuant to the Priority Reimbursement Schedule attached hereto and incorporated herein by reference as Exhibit "N" ("Priority Reimbursement Schedule"). The parties agree that the TIF Eligible Expenses identified for "priority reimbursement" on the Priority Reimbursement Schedule" shall be paid back to the Developer and/or City, as the case may be, from the bond proceeds net of the bond issuance costs, any payments due the School District, and the bonds will be paid off with the tax increment from the Redevelopment Site.

ARTICLE V
Performance/Default

5.01 Time of the Essence. It is understood and agreed by City and Developer that time is of the essence of this Agreement, and that all Parties shall make every reasonable effort to expedite the performance of their respective duties hereof. It is further understood and agreed that the successful consummation of this Agreement shall require the continued cooperation of City and Developer. Whenever the consent or approval of City is required in order for Developer to accomplish the purposes and intent hereof, such consent shall not be unreasonably withheld or unduly delayed. If such consent or approval is denied, such denial shall be in writing, and shall specify the reason or reasons for such denial. Whenever the submission of documentation by Developer is reasonably required for the City to verify the underlying costs and the payment thereof related to Eligible Reimbursable Costs, Developer shall comply therewith, and such consent of City shall not be unreasonably withheld, conditioned or unduly delayed. If the request for documentation is denied, such denial shall be in writing, and shall specify the reason or reasons for such denial.

5.02 Force Majeure. For the purposes of any of the provisions of this Agreement, neither City nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by circumstances out of the reasonable control of the respective party, such as damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes or cyclones and other like event or condition beyond the reasonable control of the Party affected which in fact interferes with the ability of such Party to discharge the respective obligations hereunder; nor shall either City or Developer be considered in breach of, or default in its obligations under this Agreement in the event of a delay resulting from the conduct of any judicial, administrative or legislative proceeding or caused by litigation or proceedings by a third party challenging the authority or right of City to act under the Redevelopment Plan, any of the ordinances, or perform under this Agreement. City shall diligently contest any such proceedings and any appeals therefrom. City may settle a contested proceeding at any point, so long as the settlement results in City's ability to perform pursuant to this Agreement and so long as any such settlement does not impose additional obligations on Developer or increase its obligations under this Agreement,

unless by agreement with the Developer. Provided, however, that the Party seeking the benefit of the provisions of this Section 5.02 shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other Party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

5.03 No Waiver by Delay. Any delay by City or Developer in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that City and the Developer should still hope to otherwise resolve the problems created by the default involved). No waiver in fact made by City with respect to any specific default by Developer should be considered or treated as a waiver of the rights of City with respect to any other defaults by Developer or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the Developer with respect to any specific default by City should be considered or treated as a waiver of the rights of the Developer with respect to any other defaults by City or with respect to the particular default except to the extent specifically waived in writing.

5.04 Required Gap Payments. No later than November 30 of the year before the first bond payment is due and annually thereafter, a calculation of estimated taxes by the City will be made to project the increment to be received from the Property so that an SSA levy may be filed with the County if necessary. If, based on these annual determinations, the increment from the Property is or may be insufficient to cover any bond payment when it becomes due, and/or the levy for the Special Service Area is or may be insufficient to make up the difference between the amount of the bond payment that is due and the increment plus the maximum amount generated by or to be generated by a Special Service Area tax levy, the City shall provide written notice by November 1 of the year in which the levy determination is made to the Developer of the amount required to make up the difference, in which case the Developer must give notice in writing to the City of any election to make up the difference by a cash payment on or before November 30th and the certification of the levy to the County, and Developer shall make up the difference with a cash payment to the City sufficient to make the bond payment when the bond payment becomes due. When the City determines the actual amount of the increment and SSA levy amount anticipated, if applicable, the City shall provide notice in writing of the gap payment due, but in no case shall the notice be provided less than thirty (30) days before the bond payment is due, and the Developer shall make the gap payment before the bond payment is due. Thereafter, the Developer shall be entitled to reimbursement on a yearly basis as the first priority from any increment received in any year that is in excess of the amount required to make the bond payment that is due and any excess Required and Elective Gap Payments made, as adjusted by any required School District payments, until the Developer has been fully reimbursed. Notwithstanding anything herein to the contrary, any funding of the premiums necessary to maintain insurance or bonding of the Private Improvements, if the Developer or condominium association fails to maintain the insurance or bonding, as provided in Section 4.03(b) above, will not be credited and reimbursed back to the Developer.

5.05 True Up. After the Project is completed and the initial EAV for the improved Redevelopment Site and tax rate on the initial EAV for the improved Redevelopment Site is determined, the parties shall review the increment projections annually in November each year over the life of the TIF District and identify the minimum annual increment necessary to retire the bond obligations as they come due and the minimum EAV necessary to produce that increment at the current tax rate (the "Minimum Continuing EAV") and whether the projected schedule for retiring the bonds is sufficient to retire the bonds as they come due over the life of the TIF.

(a) Determination of SSA Activation and Tax. From this calculation, the City shall determine whether and when to activate the Special Service Area tax, if it has not already been activated to cover any shortfall between increment received and bond payments that are due prior to the completion of the Project and to calculate the amount of SSA tax sufficient to make up any shortfall in the retirement of the bonds from the increment generated by the improved Redevelopment Site, as reduced by the payments the City is obligated to make to the School District for school age children residing in the Project Area.

(b) Periodic True-Up Determinations. Either party may request a true up determination following the publication of the EAV in any year to re-determine the Minimum Continuing EAV") and whether the projected schedule for retiring the bonds is sufficient to retire the bonds as they come due over the life of the TIF, and the SSA tax to be levied in the subsequent year may be adjusted accordingly. True up determinations shall take into account any reimbursement due to the Developer for any Gap Payments pursuant to Section 5.04 in excess of amounts required to pay the bond obligations when due.

(c) SSA Levies. During the life of the TIF, any reduction in the tax increment generated by the Redevelopment Site below the tax increment required to pay the bond obligations when they come due shall allow the City, at the City's option, to levy SSA tax or increase the SSA tax levy to pay the difference between the increment and the bond obligations when they are due, taking into consideration any payments required to be made to the School District, or to access the security identified in Section 5.06 to offset the difference. The SSA shall be extinguished upon retirement of the bonds.

(d) Excess SSA Funds. If SSA taxes are used by the City to pay bonds as provided in Subsection (a), and any increment is generated in excess of what is necessary to retire the bond obligations as they become due in subsequent years and/or any reimbursement amount that is due to the Developer pursuant to Section 5.03, the taxpayer(s) who paid those taxes are entitled to a refund of the prior SSA taxes paid by the such taxpayer(s) from the first of any excess increment not necessary for bond payments currently due. Notwithstanding anything here to the contrary, any funding of the premiums necessary to maintain insurance or bonding of the Private Improvements, if the Developer or condominium association fails to maintain the insurance or bonding, as provided in Section 4.03(b) above, will not be credited and reimbursed back to the Developer.

5.06 Security. The Developer's obligations to complete the Project shall be secured by a letter of credit or performance bond in form acceptable to the City in the amount of 115% of the estimated construction costs as provided in Section 1.04(g) until the Project is completed, and that insurance shall be replaced by insurance or a bond in sufficient amount to replace the building if destroyed or to make the remaining bond payments and pay off the bonds as they become due as provided in Section 4.03(b) after the Project is completed until the City's full bond obligation is retired. Said Post Completion Surety shall require notification to the City of nonpayment, nonrenewal or cancellation and shall reflect City as an additional insured with an endorsement assigning certain insurance proceeds in the event of a covered loss to the extent of the value the City is entitled to receive on an annual basis.

5.07 Breach/Default/Remedies.

(a) General. When a material breach of this Agreement is deemed to be a default as provided below, the non-breaching party may enforce this Agreement and seek any remedies, including damages, that are available in law and in equity, and the parties shall have the right to seek specific performance on the basis that damages may not satisfactorily make the non-breaching party whole, and neither party shall have any right to object to that the non-breaching party is not entitled to such equitable relief, and the non-breaching party may seek specific performance of the covenants and agreements herein contained or may seek damages for failure of performance or both.

(b) Notice of Default. Before material breach of a Party to perform its obligations hereunder is deemed to be a Default, the Party claiming such breach shall notify the other party in writing describing the alleged breach in sufficient detail to inform the breaching party.

(c) Response to Notice of Default. A party who has received a written notice of default from the other party shall respond in writing as follows:

(i) Proof of No Default. Objecting to the notice of default and providing or offering to provide proof that there is no as specified below; or

(ii) Acknowledgment and Performance. Acknowledging the default and beginning to take immediate actions to cure the default as provided below.

(d) Determination of Default. Default shall be determined as follows:

(i) General. For all breaches other than delay and the breaches specified below, Developer shall be in default if Developer does not provide proof of no default within fifteen (15) days and/or take actions required to cure the default immediately, but in no event later than thirty (30) days and continue with ongoing, diligent performance thereafter as required to cure the default.

(ii) Construction. For failure to construct the Project Improvements in substantial compliance with the approved Final Plan. Developer shall be in default if Developer fails to provide proof of no default within thirty (30) days of notice in writing thereof, unless the cure cannot reasonably be completed within thirty (30) days from the Notice of Default and Developer is proceeding with reasonable diligence to cure the default and continues diligently to cure the default until fully cured;

(iii) Prevailing Wage. For failure to comply with the Prevailing Wage Act, Developer shall be in default if Developer does not provide proof of no default within five (5) days and/or cure the default no later than thirty (30) days from the Notice of Default;

(iv) Lapse in Insurance. For failure to maintain the required insurance, Developer shall be in default if Developer does not provide proof of no default within five (5) days and/or provide proof of the required insurance within ten (10) days from the Notice of Default (no work shall continue during any period in which the proper insurance is not maintained);

(v) Lapse in Surety. For failure to provide or maintain the surety as required by this Agreement and the City Code, Developer shall be in default if Developer does not provide proof of no default within five (5) days and or reinstate the surety within fifteen (15) days from the Notice of Default (no work shall continue during any period in which the proper surety is not maintained);

(vi) Bankruptcy or Insolvency. For any third party determination of insolvency or any voluntary or involuntary bankruptcy or assignment for the benefit of creditors, Developer shall be in default if Developer does not provide proof of no default within thirty (30) days, provided that Developer may cure the default by filing a motion for determination of solvency, to dismiss the bankruptcy or invalidate the assignment for benefit of creditors, and the default shall be considered cured and, within sixty (60) days from the determination, filing or assignment, an appropriate order is entered undoing the same;

(vii) Lis Pendens, Lien or Foreclosure. For any filing of a *lis pendens* notice, a mechanics lien, judge lien, tax lien, or similar encumbrance other than the mortgages filed to secure the constructions and long term financing of the Project, or the filing of suit for foreclosure of any mortgage, lien or other encumbrance.

(viii) Filing to Reduce taxes or Assessed Valuation. Immediately Developer shall be in default for the filing of any application or request to reduce real estate taxes or the assessed valuation of the Developer's Property below the Minimum Continuing EAV amount that would result in the failure of the Developer's Property to generate the tax increment as estimated and stated in the Pro Forma until all of the funds paid out by the City have been reimbursed back to the City through the increase in tax increment from the Developer's Property, providing that the Developer has a right to cure the default and reinstate the Agreement in good standing by withdrawing the application or request;

(ix) Unauthorized Assignment. Immediately, without notice, Developer shall be in default upon the assignment of this Agreement or transfer, assignment or other conveyance of title to the Developer's Property without the consent of the City as provided in this Agreement, provided that the default may be cured by obtaining

the City's consent, which consent shall not be unreasonably withheld, and satisfying the other conditions in Section 10.01;

(x) Failure to Complete the Project. Immediately, without notice, Developer shall be in default for failure to complete the Project Improvements within thirty-six (36) months from the date the construction permit is issued, whichever is later (the "Final Completion Date"), except for periods of delay that are beyond the Developer's control as provided in Section 5.02. The City in its sole discretion shall be permitted to extend this date by action of the City Council.

(e) Remedies for Developer Default. Subject to the requirement of written notice and Developer's right to provide proof of no default or an opportunity to cure as set forth in 5.07(b) and (c) above, upon default by the Developer as provided above, the City shall have the following specific remedies, which remedies are in addition to any general remedies available in law or equity and which shall be cumulative and not exclusive: 1) withhold permits, inspections, review of plans and other approvals for the Project until the default is cured; 2) issue a cease and desist order requiring all construction to stop until a specific default is cured; or 3) withhold payments due the Developer until a specific default is cured, including the filing of a mechanics lien claim against the property or against the funds owed to the Developer by the City; 4) terminate the Agreement due to default and the filing of bankruptcy by Developer, involuntary bankruptcy or any involuntary assignment for the benefit of creditors, any declaration of insolvency or the filing of foreclosure against the property by a mortgagee after notice and sixty (60) days to cure the breach; 5) if the Project is not completed, demand and obtain title to the Redevelopment Site and access the performance surety to complete the project; or 6) increase the levy of the SSA tax or access the Post-Construction Security as provided in Section 5.06. In addition to the forgoing, all remedies applicable in law or in equity for breach of contract shall be available to the City, which remedies shall be cumulative.

(f) Remedies for Breach by the City. Upon breach of the Agreement by the City, the Developer shall have all remedies applicable in law or in equity for breach of contract, which remedies shall be cumulative, and not exclusive.

5.08 Inspection Rights. Any duly authorized representative of City, at all reasonable times, shall have access to the Project for the purpose of confirming Developer's compliance with the Agreement. Said inspection is in addition to any inspections required for grading, construction, and other building or engineering elements regulated by the Batavia Municipal Code.

ARTICLE VI
Term of Agreement

6.01 Term of Agreement. This Agreement shall commence on the Effective Date, and shall continue through the full term of the TIF, unless sooner terminated by right of a Party contained in this Agreement or by court order, until all of the obligations of the Parties have been fully performed.

ARTICLE VII
Notice

7.01 Notices. All notices and demands given or required to be given by any Party hereto to any other Party ("notices") shall be in writing and shall be delivered in person or sent by telecopy with electronic confirmation of receipt thereof and with concurrent mailing by U.S. Postal Service delivery, or by a reputable overnight carrier that provides a receipt, such as Federal Express or UPS, or by registered or certified U.S. mail, postage prepaid, addressed as follows (or sent to such other address as any Party shall specify to the other Party pursuant to the provisions of this Section):

To Developer:

David Patzelt, President;
1 N. Washington, L.L.C.
17 N. First Street
Geneva, IL 60134
630-232-8570
email: dave_patzelt@shodeen.com

and:

Kate McCracken
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 E. Main St., Ste G
St. Charles, IL 60174
(630) 513-8700
kate@hmcpc.com

To City:

Laura Newman
City of Batavia
100 North Island Avenue
Batavia, IL 60510
email: cityadministrator@cityofbatavia.net

With a copy to:

City Clerk
City of Batavia
100 North Island Avenue
Batavia, Il 60510
email: cityclerk@cityofbatavia.net

ANY NOTICE REQUIRED FOR UNDER THIS AGREEMENT MAY ALSO BE SENT BY EMAIL. All notices delivered in the manner provided herein shall be deemed given upon actual receipt (or attempted delivery if delivery is refused).

ARTICLE VIII
TIF Provisions

8.01 Application of the TIF Act. This Agreement is to be construed according to the provisions and the authority of the Tax Increment Allocation Redevelopment Act (the "TIF Act"), Sections 11-74.4-1 et seq. (65 ILCS 5/11-74.4-1 et seq.), and the City Funds shall be considered tax increment financing ("TIF") in keeping therewith.

8.02 Alternative Proposal or Bid Contingency. The approval of this Agreement is contingent on the making of public disclosure of the terms of this Agreement, public notice of a request for alternative proposals or bids and a reasonable opportunity for the City to obtain any and all bids and proposals made in response to the request for alternative proposals or bids, as required by the TIF Act (65 ILCS 5/7.4-4(c)). The City reserves the absolute right to reject this Agreement in favor of any alternative proposal or bid that provides greater public benefit, as determined by the City in its sole discretion. The right of the City to reject this Agreement and accept an alternative bid or proposal shall be considered waived if the City does not provide notice in writing to the Developer of its intention to reject the

Agreement and accept an alternative proposal or bid within forty five (45) days from the effective date of this Agreement, thirty (30) days from the date that notice is published seeking alternative proposals or bids or fourteen (14) days from the date that a timely alternative proposal or bid is received in response to the notice that was published, whichever is later.

8.03 Approvals. The City covenants, represents and warrants to Developer, that the approval of this Agreement, of the Project and the Project Plan and the implementation of this Agreement is in compliance with the TIF Ordinances and the TIF Act.

8.04 Source of City Funds. The parties agree that the City shall use existing funds under control of the City or issue debt through the sale of municipal bonds, or a combination of such sources in paying the costs of the Eligible Improvements, either to the City's general fund or TIF account, or to the Developer as reimbursement for such Eligible Improvements Costs, in accordance with this Agreement.

8.05 TIF Eligible Costs. TIF Eligible Costs are costs for improvements that are eligible to be made in compliance with the TIF Act, and the City covenants, represents and warrants that the Eligible Improvement Costs are TIF Eligible Costs.

8.06 Indemnification.

(a) By Developer. Developer hereby agrees to indemnify, defend and hold the City, its officers, agents and employees harmless from and against any losses, costs, damages, liabilities claims, suits, actions, causes of action and expenses (including without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City in connection with (i) the failure of Developer to perform its obligations under this Agreement, or (ii) the failure of Developer or any contractor or subcontractor to pay contractors, subcontractors, or materialmen in connection with the Improvements and in compliance with the Prevailing Wage Act, to the extent that it applies, or (iii) material misrepresentations or omissions in the Redevelopment Plan, this Agreement or any financing documents related thereto which are solely the result of information supplied or omitted by the Developer or by agents, employees, contractors, or persons acting under the control or at the request of the Developer, or (iv) the failure of Developer to cure any misrepresentations or omissions in this Agreement.

(b) By City. City hereby agrees to indemnify, defend and hold the Developer, its officers, managers, members, agents and employees harmless from and against any losses, costs, damages, liabilities claims, suits, actions, causes of action and expenses (including without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the Developer in connection with (i) the failure of City to perform its obligations under this Agreement, or (ii) the failure of City to pay out the reimbursement amounts that Developer is entitled to receive pursuant to this Agreement, or (iii) material misrepresentations or omissions in the Redevelopment Plan, this Agreement, or (iv) the failure of City to cure any misrepresentations or omissions in this Agreement or any other agreement relating hereto.

8.07 Eligible Reimbursement Costs. Eligible Reimbursement Costs are all of the actual costs for the Eligible Improvements described in Section 2.10(a) that are incurred and substantiated by Developer as required herein.

ARTICLE IX
Real Estate and Tax Covenant

9.01 Tax Exemptions and Reductions. With reference to the assessment of the Property and the Project or any part thereof, during the Term of this Agreement, Developer shall not directly or indirectly, do the following until all of the City Funds paid out by the City pursuant to this Agreement have been reimbursed back to the City from the increased tax increment generated by the Redevelopment Site: (1) apply for, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) from real estate taxation for the Property; or (2) file of any application or request to reduce real estate taxes or the assessed valuation of the Developer's

Property below an amount that would result in the failure of the Developer's Property to generate the tax increment as necessary to pay the bond obligation when due

9.02 Understanding of the Parties. The foregoing covenants in subsection 9.01 above shall be construed and interpreted as an express agreement by Developer with the City that an incentive inducing the City to enter into the arrangements and transactions described in this Agreement is to increase the assessed valuation of the Redevelopment Site, including the Project.

9.03 Recording Memorandum. The Parties agree that this Agreement shall record the Memorandum for Recording attached hereto as **Exhibit K** with the Kane County Recorder of Deeds, and the provisions of this Agreement shall be covenants running with the land. The covenants shall be binding upon Developer, and its agents, representatives, tenants, lessees, successors, assigns or transferees from and after the date hereof; provided, notwithstanding any provision herein to the contrary, that the covenants shall be null and void twenty three (23) years after the first anniversary date of this Agreement or when the City has received the tax increment generated by the Redevelopment Site sufficient to pay back the Bonds. Any sale, conveyance or transfer of title to all or any portion of the Redevelopment Site from and after the date hereof shall be subject to such covenants and restrictions. Developer further agrees that to the extent it is obligated to pay any portion of the real estate tax bills for the Redevelopment Site, it shall pay such taxes promptly before the date of delinquency of such tax bills. In the event that Developer, and any successor or assign thereof, transfers ownership of the Redevelopment Site, the transferee owner of same shall be liable from and after such transfer, but Developer shall not be released from any and all liability under this Agreement except as provided in Article X.

ARTICLE X
Miscellaneous

10.01 Right to Assign Agreement. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Developer may at any time, assign all of its right, title, interest and obligations in and to this Agreement to a special purpose affiliate of Developer created by Developer solely for the development of the Project in accordance with the Project Plan, provided that the Developer notifies the City in writing prior to the transfer of title, and further providing that the City funds shall be paid to the special purpose affiliate and the special purpose affiliate shall assume and be liable for all of the obligations of the "Developer" under this Agreement, including without limitation, the indemnification obligations, and shall be for all purposes under this Agreement the "Developer", and further provides that the Developer shall remain secondarily obligated. The Developer's right to assign the Agreement to a third party (not a special purpose affiliate) and be released from the obligations hereof are contingent on: 1) there being no uncured breach of this Agreement at the time of assignment; 2) the written acknowledgment of the assignee that it takes title subject to the obligations of this Agreement; 3) the written undertaking of the assignee to be bound by the obligations and terms of this Agreement; 4) the written consent of a construction or permanent financing institution, if applicable; and 5) any payments to be made by the City pursuant to this Agreement shall be made to the assignee from and after the effective date of the Assignment. City cannot assign its interest in the parking deck or any rights or obligations relating thereto prior to transfer of title of the Public Parking Facility to the City under Section 1.01 without Developer's prior written approval. It is the intent of the City that it will own the Public Parking Facilities throughout the term of the Agreement and indefinitely after that.

10.02 Binding Effect. Subject to any provision of this Agreement that may prohibit or curtail assignment of any rights hereunder, this Agreement shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the Parties hereto.

10.03 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. In case of litigation, venue for any proceedings arising under this Agreement shall be in Kane County, Illinois.

10.04 Attorneys' Fees. If either Party retains an attorney to enforce this Agreement, the prevailing Party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings and all appeals.

10.05 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, that term, provision, covenant or condition shall be modified, if possible, to give it affect in harmony with the law and this Agreement, and regardless whether such term, provision, covenant or condition can be given affect as modified, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.06 Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof.

10.07 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and any oral or written representations, agreements, understandings and/or statements shall be of no force and effect.

10.08 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

10.09 Authority. The individual(s) signing this Agreement on behalf of City and Developer represent and warrant they have the power to bind City and Developer, respectively, and that no further action, resolution, or approval from City or Developer is necessary to enter into this Agreement.

10.10 Waiver/Amendment. No modification, waiver, amendment, discharge or change to this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

10.11 Conflict of Interest/Liability. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement; nor shall any member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No member, official, or employee of City shall be personally liable to Developer or any successor in interest in the event of any default or breach by City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

10.12 Equal Opportunity. Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, mental or physical disability, national origin or ancestry, sexual orientation, marital status, parental status, military discharge status or source of income. Developer shall endeavor to include similar provisions, in every written contract for the Project that Developer enters into, and Developer shall endeavor to require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provision will be binding upon each such contractor, or sub-contractor.

10.13 Mutual Assistance. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

10.14 Recitals. The recitals set forth above prior to the beginning of Article I are incorporated herein as the material findings and understandings of this Agreement.

10.15 Project Expenses. Without limitation to claims for damages, enforcement costs and the like for a breach by City of this Agreement, City's obligations for the payment of Project Plan expenses are limited to the payment of Eligible Reimbursement Costs subject to the Maximum Eligible Reimbursement Costs, and City shall not be liable for other Project costs.

IN WITNESS WHEREOF, intending to be legally bound this Agreement has been duly executed by the Parties hereto effective as of the Effective Date.

1 N. WASHINGTON, L.L.C.,
AN ILLINOIS LIMITED LIABILITY CORPORATION

BY: _____
ITS: _____
NAME: _____

CITY OF BATAVIA,
AN ILLINOIS MUNICIPAL CORPORATION

BY: _____
NAME: _____
TITLE: _____

EXHIBIT A

Church Property, Service Master Property and parking Lot
Legal Description

1 N. Washington, St. Batavia, IL et al.

PARCEL ONE:
THAT PART OF LOTS 3, 4, 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER; DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 5 IN SAID BLOCK 7; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 30.04 FEET TO THE WEST LINE OF AN EXISTING BRICK BUILDING; THENCE NORTHERLY ALONG THE OUTSIDE WEST WALL OF SAID BRICK BUILDING 38.02 FEET TO THE NORTHWEST CORNER OF SAID BUILDING; THENCE EAST ALONG THE OUTSIDE NORTH WALL OF SAID BUILDING .38 OF A FOOT TO THE EASTERLY LINE OF THE WESTERLY 31 FEET OF SAID LOT 5; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT TO A POINT 108 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID LOT, MEASURED ALONG THE EAST MENTIONED LINE EXTENDED SOUTHERLY; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF WILSON STREET 45 FEET; THENCE SOUTHERLY PARALLEL WITH THE WESTERLY

PARCEL TWO:
LOT 5, EXCEPT THE WESTERLY 49 FEET OF THE SOUTHERLY 118 FEET, IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL THREE:
LOT 6 IN BLOCK 7 IN THE TOWN OF BATAVIA ON THE EAST SIDE OF THE FOX RIVER, IN KANE COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART THEREOF CONVEYED TO THE CITY OF BATAVIA IN INSTRUMENT RECORDED JANUARY 18, 1980 AS DOCUMENT 1933924, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE WESTERLY 28.23 FEET ALONG THE SOUTH LINE OF LOT 6 TO A POINT OF CURVATURE ON A CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 25.0 FEET AND A CENTRAL ANGLE OF 96 DEGREES 57 MINUTES 00 SECONDS AN ARC LENGTH OF 42.30 FEET TO A POINT OF TANGENCY ON THE EAST LINE OF LOT 6; THENCE SOUTHERLY 28.23 FEET ALONG THE EAST LINE OF LOT 6 TO THE POINT OF BEGINNING.

PARCEL FOUR:
THE SOUTHERLY HALF OF LOTS 7 AND 8 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL FIVE:
THE NORTHERLY HALF OF LOTS 7 AND 8 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL SIX:
THE NORTH 10 FEET OF THE SOUTH 118 FEET OF THE EAST 26 FEET OF THE WEST 31 FEET OF LOT 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PIN Nos. 12-22-276-011; 12-22-276-012; 12-22-276-013; 12-22-276-015; 12-22-276-016; 12-22-276-017; 12-22-276-018; 12-22-276-019 and 12-22-276-020

EXHIBIT B

City Property Legal Description

20 N. River, Batavia, IL
111 E. Wilson St., Batavia, IL
115 E. Wilson St., Batavia, IL

LOTS 1 AND 2 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF FOX RIVER EXCEPT THE SOUTHERLY 10 FEET OF THE PART OF LOT 2 LYING WESTERLY OF THE WESTERLY LINE EXTENDED NORTHERLY OF LOT 4 IN SAID BLOCK 7; ALSO EXCEPT THAT PART OF LOT SAID LOT 2 DESCRIBED AS FOLLOWS; BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 4 IN SAID BLOCK 7; THENCE WESTERLY AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID LOT 4 TO THE WESTERLY LINE EXTENDED NORTHERLY OF SAID LOT 4; THENCE SOUTHERLY ALONG SAID EXTENDED WESTERLY LINE TO THE SOUTHERLY LINE OF SAID LOT 2; THENCE EASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS 20 N. RIVER STREET, BATAVIA, ILLINOIS

LOT 4 (EXCEPT THE EASTERLY 66.00 FEET OF THE SOUTHERLY 118.00 FEET) AND THAT PART OF LOT 2, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF SAID LOT 4 TO A POINT IN THE WEST LINE OF SAID LOT 4 EXTENDED NORTHERLY (BEING ALONG SOUTHERLY LINE OF LAND CONVEYED TO THE CITY OF BATAVIA BY DEED DOCUMENT 1050538 RECORDED JULY 26, 1965); THENCE SOUTHERLY ALONG SAID EXTENDED WEST LINE OF SAID LOT 4 TO THE NORTHWEST CORNER OF SAID LOT 4 (BEING ALONG EASTERLY LINE OF LAND CONVEYED BY DEED DOCUMENT 2005K09716 RECORDED AUGUST 19, 2005 TO CASEY K. O'BRIEN AND LAURA C. O'BRIEN); THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 4 TO THE POINT OF BEGINNING, ALL IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA ON THE EAST SIDE OF FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS

COMMONLY KNOWN AS 111 E. WILSON STREET, BATAVIA, ILLINOIS

THAT PART OF LOTS 3, 4, 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER; DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 5 IN SAID BLOCK 7; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 30.04 FEET TO THE WEST LINE OF AN EXISTING BRICK BUILDING; THENCE NORTHERLY ALONG THE OUTSIDE WEST WALL OF SAID BRICK BUILDING 38.02 FEET TO THE NORTHWEST CORNER OF SAID BUILDING; THENCE EAST ALONG THE OUTSIDE NORTH WALL OF SAID BUILDING .38 OF A FOOT TO THE EASTERLY LINE OF THE WESTERLY 31 FEET OF SAID LOT 5; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT TO A POINT 108 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID LOT, MEASURED ALONG THE EAST MENTIONED LINE EXTENDED SOUTHERLY; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF WILSON STREET 45 FEET; THENCE SOUTHERLY PARALLEL WITH THE WESTERLY

and

THE NORTH 10 FEET OF THE SOUTH 118 FEET OF THE EAST 26 FEET OF THE WEST 31 FEET OF LOT 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX

COMMONLY KNOWN AS 115 E. WILSON STREET, BATAVIA, ILLINOIS.

EXHIBIT C

Fisher Property Legal Description

113 E. Wilson St. Batavia, IL

PARCEL ONE:
THE WESTERLY 26 FEET OF THE EASTERLY 66 FEET OF THE SOUTHERLY 118 FEET OF LOT 4 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL TWO:
EASEMENT FOR USE AS ALLEY CREATED BY INSTALLMENT AGREEMENT FOR DEED RECORDED MARCH 22, 1968, AS DOCUMENT 1110021 MADE BY PASETTI TO FITCH AND OTHERS FOR THE BENEFIT OF PARCEL 1 OVER THE SOUTHERLY 120.64 FEET (EXCEPT THE EASTERLY 66 FEET THEREOF) OF LOT 4 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

Property Address: 113 E. Wilson St., Batavia, IL 60510

PIN: 12-22-276-010-0000

Exhibit D

Frydendall Property Legal Description

121 E. Wilson St. Batavia, IL

THAT PART OF LOT 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF FOX RIVER, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT, 31 FEET EASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT 118 FEET; THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID LOT 18 FEET; THENCE SOUTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT 118 FEET TO THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 5, 18 FEET TO THE POINT OF BEGINNING, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS

Property Address: 121 E. Wilson St., Batavia, IL 60510

PIN: 12-22-276-014-0000

EXHIBIT E

Legal Description

8 N. River and 109 E. Wilson Easement

THE WESTERLY 9 FEET OF THE SOUTHERLY 118 FEET OF LOT 4, BLOCK 7, OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

EXHIBIT F

Legal Description

8 N. River St. and 109 E. Washington St., Batavia, IL

LOT 4 (EXCEPT THE EASTERLY 66 FEET OF THE SOUTHERLY 118 FEET) AND THAT PART OF LOT 2, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 4; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF SAID LOT 4, TO A POINT IN THE WEST LINE OF SAID LOT 4 EXTENDED NORTHERLY; THENCE SOUTHERLY ALONG SAID EXTENDED WEST LINE OF SAID LOT 4 TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 4 TO THE POINT OF BEGINNING, ALL IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

EXHIBIT G

Legal Description for Redevelopment Site
(all parcels)

THAT PART OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, KANE COUNTY, ILLINOIS; THENCE SOUTHERLY, ALONG THE WESTERLY LINE OF WASHINGTON AVENUE TO THE NORTHERLY LINE OF WILSON STREET; THENCE WESTERLY, ALONG SAID NORTHERLY LINE, TO THE SOUTHEAST CORNER OF LOT 3 IN SAID BLOCK 7; THENCE NORTHERLY, ON THE EAST LINE OF SAID LOT 3 TO THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 2 OF SAID BLOCK 7, A DISTANCE OF 10.0 FEET; THENCE WESTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 2, TO THE EAST LINE OF RIVER STREET; THENCE NORTHERLY, ALONG SAID EAST LINE, 20 THE SOUTH LINE OF STATE STREET; THENCE EASTERLY, ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING, ALL IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

EXHIBIT H

List of Public Improvements

1.	**Off-site Storm Sewer**	**City responsibility and cost**
2.	**Off-site Sanitary Sewer**	**City responsibility and cost**
3.	**Off-site Watermain**	**City responsibility and cost**
4.	**Off-site Electric**	**City responsibility and cost**
4.	**Environmental Cleanup**	**Developer responsible for work; City responsible for all cost**
5.	**Demolition**	**Developer responsible for work; City responsible for all cost**
6.	**Route 25 Widening and Left Turn Lane**	**Developer and City share equally in all related expenses.**
7.	**Route 25 Turn-In/Turn-Out Lanes**	**Developer responsibility and cost**
8.	**Streetscape improvements**	**Developer responsibility and cost up to $400,000**
9.	**Sidewalk & Right-of-Way**	**Developer responsibility and cost**
10.	**Public Parking Facility**	**Developer responsibility and cost**
11.	**Onsite utility connections**	**Developer responsibility and cost**

EXHIBIT I

Reserved

EXHIBIT J

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into _____, 2016 (or such later date that Purchaser receives a fully executed copy of this Agreement) by and between **CITY OF BATAVIA,** AN ILLINOIS MUNICIPAL CORPORATION ("Seller"), and **1 N. WASHINGTON LLC.** AN ILLINOIS LIMITED LIABILITY COMPANY ("Purchaser")**.**

R E C I T A L S:

A. Seller is the owner of the "Property" described below.

B. Seller and Purchaser have entered into that certain written agreement captioned *1 North Washington St. Redevelopment Agreement* dated of even date herewith (the "Redevelopment Agreement") and the terms defined in that Redevelopment Agreement shall have the same meanings in this Purchase and Sale Agreement unless those terms are defined differently herein.

C. Upon the satisfaction of, and subject to, the terms and conditions set forth in this Agreement, Seller has agreed to sell the Property to Purchaser, and Purchaser has agreed to purchase the Property from Seller.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as set forth below.

Section 1. Notice and Effective Date.

This Agreement shall become effective thirty (30) days after the (a) City of Batavia acquires title to the Fisher Property, the Frydendall Property and the easements identified in the 1 North Washington St. Redevelopment Agreement entered into contemporaneously between the parties to this Purchase and Sale Agreement , (b) the buildings are demolished, (c) the City has done the environmental testing and remediation, if necessary, and the property is ready for construction, and (d) the parking lots and parking facilities are demolished and gives notice to the Developer (the "**Notice to Proceed**") (hereinafter the "E**ffective Date**"),

Section 2. Purchase and Sale of the Property.

Subject to and in accordance with the terms and conditions contained in this Agreement, and consistent with and subject to the terms of the Redevelopment Agreement, Seller agrees to sell, assign, convey, and transfer to Purchaser all Seller's right, title and interest in and to the "Property" (as hereinafter defined), and Purchaser hereby agrees to purchase the Property for Ten and No/100th Dollars, the additional consideration from the Developer being contained in the Redevelopment Agreement. For purposes hereof the "Property" is collectively defined as set forth in paragraphs 1a, b and c below:

a. Land. Subject to the permitted exceptions (as defined below), fee simple title to that certain real property commonly known as 1 N. Washington Street, 20 N. River Street, 111, 113, 115, 121 and 133 E. Wilson St., Batavia, Illinois, which real property is identified as the Redevelopment Site and more particularly described in **Exhibit "E"** of the Redevelopment Agreement ("Land"). The Land and the "Improvements" (hereinafter defined) are together called the "Real Property".

b. Appurtenances. All rights, privileges and easements appurtenant to the Real Property, all development rights, water rights, mineral rights, and air rights relating to the Real Property and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Real Property ("Appurtenances").

c. Awards. All right, title and interest to any unpaid awards for damages to the Real Property resulting from any casualty, taking in eminent domain or by reason of change of grade of any street accruing after closing of the purchase and sale pursuant to this Agreement.

Section 2. Due Diligence Period; Contingency; Closing Date.

a. Initial Due Diligence Period. For ninety (90) day period that begins on the date of the Notice to Proceed (the "Initial Due Diligence Period"), Purchaser and/or Purchaser's consultants, shall have the right to: (i) enter upon and investigate the Property from time to time to examine and inspect same and to make such feasibility, financing, environmental, development, survey, title, zoning, regulatory, utility, engineering, soil and other tests and studies as are deemed necessary or desirable by Purchaser; and (ii) file the necessary and appropriate applications for zoning and other approvals for the redevelopment of the site as a multi-story apartment building on top of a public parking garage identified in Section 1.02(b) of the Redevelopment Agreement. Purchaser shall indemnify and save Seller and the Property harmless from any and all obligations, claims, accounts, demands, liens or encumbrances, including costs and expenses (including attorney's fees and costs of suit) in any way relating to or arising from the acts of Purchaser or those acting by, through or under Purchaser pursuant to this paragraph. In the event said investigation, examination and inspection is unacceptable to Purchaser, for any reason, Purchaser may by notice to Seller given no later than the fifth (5^{th}) Business Day following the expiration of the Initial Due Diligence Period, terminate this Agreement, and in such event this Agreement shall thereafter be null and void, and neither party hereto shall have any claim against the other (provided, however, the foregoing provisions of this sentence shall not be construed to limit or waive any reimbursement or indemnification provision set forth in this Agreement or the Redevelopment Agreement which shall survive termination of this Agreement). In the case that Purchaser has conducted soil test or any other activity requiring excavation, and thereafter terminates this Agreement, Purchaser shall restore the grade of the Land to its general condition prior to such testing.

b. Zoning & Approval Period. Provided that the Purchaser submits to the City applications for final zoning and preliminary plan approvals within thirty (30) days after the Seller provides the Notice to Proceed and proceeds forward with the diligent pursuit of zoning and preliminary plan approval, in the event the zoning and preliminary plan approval is unacceptable to Purchaser, for any reason, Purchaser may by written notice to Seller given no later than the thirtieth (30^{th}) day following the zoning and preliminary plan approval, terminate this Agreement, and in such event this Agreement shall thereafter be null and void, and neither party hereto shall have any claim against the other.

c. Closing Date. Provided neither party has not elected to terminate this Agreement within the Initial Due Diligence Period or Zoning & Approval Period, the "Closing" of the transaction contemplated hereby shall occur within thirty (30) days after final zoning & and preliminary plan approval , or otherwise on a date that is mutually agreed upon by Purchaser and Seller (the "Closing Date"). The Closing shall take place through escrow ("Escrow") on the Closing Date at the offices of Chicago Title Insurance Company, 1795 IL-38, Geneva, IL 60134 (the "Title Insurer"). Possession of the Property shall be delivered to Purchaser on the Closing Date free and clear of the rights of all third parties, excepting Purchaser and/or affiliates of Purchaser identified by Purchaser in writing.

Section 3. Property Information / Title and Survey.

a. Current Title. Seller shall, at Seller's sole cost and expense, order: (i) a current (dated subsequent to the Notice to Proceed) title commitment from the Title Insurer for the Land, and (ii) legible copies of all documents of record affecting the Real Property as disclosed in the title commitment (the "Title Information"), and

request all of same no later than thirty (30) days after the Notice to Proceed. Not later than thirty (30) days following receipt of all Title Information (the "Title Advisory Date"), Purchaser shall provide written notice to Seller of ("Purchaser's Title Notice"): (i) permitted exceptions to title (ii) the Redevelopment Agreement and easements and other obligations specified therein and (iii) any matters affecting title to the Real Property which are not permitted by Purchaser as to which Purchaser disapproves, and pursuant to said notice request that Seller correct such unpermitted title matters. Seller shall, in the exercise of its reasonable discretion, advise Purchaser not later than the fifth (5^{th}) business day following its receipt of Purchaser's Title Notice (the "Title Response Date"), as to whether Seller intends to correct the unpermitted title matters or provide endorsement coverage with respect thereto prior to the Closing. If Seller elects not to correct the unpermitted title matters, or if Seller elects not to provide endorsement coverage, or if Seller provides no notice to Purchaser by 5:00pm on the Title Response Date (in which event Seller shall be deemed to have elected not to correct the unpermitted title matter), Purchaser shall have the option to either waive its objection or cancel this Agreement in writing to Seller given no later than the later of: (i) the expiration of the tenth (10^{th}) Business Day following expiration of the Initial Due Diligence Period, and (ii) the expiration of the tenth (10^{th}) Business Day following the Title Response Date. If Seller elects to correct an unpermitted title matter by way of endorsement coverage, Purchaser shall have the right to approve the form and content of the endorsement, which approval shall be in Purchaser's sole and absolute discretion.

b. **Current Survey**. Seller shall, at Seller's sole cost and expense, secure a current ALTA/ACSM survey of the Real Property (the "Survey") not later than forty five (45) days after the Notice to Proceed. Not later than ten (10) days following receipt of all Survey (the "Survey Advisory Date"), Purchaser shall provide written notice to Seller of ("Purchaser's Survey Notice") of any matters affecting title to the Real Property which are not permitted by Purchaser as to which Purchaser disapproves, and pursuant to said notice request that Seller correct such unpermitted title matters. Seller shall, in the exercise of its reasonable discretion, advise Purchaser not later than the fifth (5^{th}) business day following its receipt of the Survey ("Survey Response Date") as to whether Seller intends to correct any unpermitted title matters or provide endorsement coverage with respect thereto prior to the Closing. If Seller elects not to correct the unpermitted title matters, or if Seller elects not to provide endorsement coverage, or if Seller provides no notice to Purchaser by 5:00pm on the Title Response Date (in which event Seller shall be deemed to have elected not to correct the unpermitted title matter), Purchaser shall have the option to either waive its objection or cancel this Agreement in writing to Seller given no later than the expiration of the fifth (5^{th}) Business Day following the Title Response Date. If Seller elects to correct an unpermitted title matter by way of endorsement coverage, Purchaser shall have the right to approve the form and content of the endorsement, which approval shall be in Purchaser's sole and absolute discretion.

Section 4. Prorations. Seller and Purchaser agree that some of the Property is currently exempt from Real Property taxation, that there are no utilities charged to Seller for operation of the lighting on the Property, and no other utility which may result in a charge to Seller and/or to Purchaser, and there are no other expenses to be pro-rated. The Purchaser agrees and acknowledges that the current tax exemption applicable to the City property shall expire upon transfer of title.

Section 5. Conditions to Closing. Purchaser's obligation to purchase the Property shall, in addition to any other conditions set forth in this Agreement, be conditional and contingent upon satisfaction, or written waiver by Purchaser, of each and all of the below listed conditions on or before Closing Date (the "Conditions"):

a. Title Policy. On the Closing Date, Title Insurer shall be irrevocably committed to issue to Purchaser an ALTA extended coverage owner's policy of title insurance for the Real Property, with such endorsements requested by Purchaser (the "Title Policy") subject only to the permitted exceptions to title. Seller agrees that it will not cause any matters to affect title to the Real Property which would constitute further exceptions under the Title Policy.

b. Covenants, Representations and Warranties. The covenants of Seller are fully performed, and the representations and warranties of Seller are true and correct, on the Closing Date.

c. No Condemnation. The Real Property is not subject, in whole or in part, to any condemnation proceeding, or threat thereof, on the Closing Date.

d. No Third Parties in or with right to Possession. No person or entity has, or claims to have, any right to possession of the Real Property or is in possession of the Real Property, whether by lease, license, or other means or claim of right, and no person or entity is in possession of the Real Property, with the exception of the federal post office box and other mailboxes on the site, which shall remain on the property where located or be moved by mutual agreement to another location on the City property or Purchaser's adjacent property.

e. Redevelopment Agreement. All "*Contingencies Precedent to Transfer of Title*" (as defined in Section 3.02 of the Redevelopment Agreement) are fully satisfied (or waived in writing by Purchaser), and/or Purchaser has not terminated the Redevelopment Agreement. In the event of any of the above conditions, or such other conditions in this Agreement contained, are not satisfied or waived by Purchaser on or before the Closing Date, Purchaser may: (i) terminate this Agreement, (ii) elect to waive such condition and proceed with the Closing, and/or (iii) pursue any and all other remedies available to Purchaser at law or in equity if the failure of such condition is due to a default of Seller of its obligations under this Agreement or under the Redevelopment Agreement..

Section 6. Documents to be Delivered at Closing. On the Closing Date, the following fully executed documents and/or items, acknowledged where appropriate, and in form and substance reasonably satisfactory to Purchaser shall be delivered to the Escrow (together referred to herein as the "Closing Documents"):

a. Deed. A Special Warranty Deed ("Deed") from Seller in form and content reasonably acceptable to Seller and Purchaser, conveying good and insurable fee simple title, subject to the permitted exceptions, and otherwise in recordable form.

b. Settlement Statement. A settlement statement prepared by the parties or the Title Insurer and acceptable to Purchaser and Seller showing all cash receipts and disbursements to be made on the Closing Date.

c. Title Policy. The Title Policy issued by the Title Insurer in the amount that Purchaser deems appropriate, insuring fee simple title Real Property as being vested in Purchaser, subject only to the permitted exceptions, and containing such endorsements as Purchaser may require. Purchaser shall be responsible to have the Title Policy delivered at the Closing (in a marked up and signed commitment or signed pro forma format so that upon closing the Title Insurer is insuring Purchaser's title to the Real Property, as opposed to committing to insure title), with the original Title Policy endeavored to be delivered to Purchaser within five (5) Business Days following the Closing Date. The cost of the Title Policy shall be borne by the Purchaser.

d. Non-Foreign Status Affidavit. An Affidavit of Non-Foreign Status executed by Seller in form and content reasonably acceptable to Seller and Purchaser, if necessary.

e. . All other documents affecting title to or possession of the Property and necessary to transfer or assign the same to Purchaser as provided herein, including without limitation, documents reasonably required by the Title Insurer.

Section 7. Representations and Warranties of Seller. Seller represents and warrants, and covenants and agrees as follows for the benefit of Purchaser and Purchaser's successors and assigns:

a. Status of and Execution by Seller. Seller is now, and on the Closing Date will be in duly empowered and authorized to do all things required of it under or in connection with this Agreement. All agreements, instruments, and documents herein provided to be executed or to be caused to be executed by Seller will be duly

executed by and binding upon Seller and enforceable according to their terms. Seller is the fee simple owner of the Real Property.

b. Non-Foreign Status. Seller is not a "foreign person" as defined in, and Purchaser shall not be required to withhold any portion of the Base Purchase Price pursuant to, Internal Revenue Code Section 1445.

c. Litigation and Condemnation. Seller has not received notice that any actions, suits, or proceedings of any kind are pending or threatened against or affecting Seller or the Property in any court of law or in equity or in arbitration or by any governmental department, commission, board, bureau, agency, or other instrumentality which might materially adversely affect the ownership or operation of the Property or the ability of Seller to timely perform its obligations under this Agreement. To Seller's knowledge, Seller has not received notice of any condemnation action threatened or pending against the Real Property, or any proposed or pending special assessment proceeding.

d. Violation of Laws. Seller has not received written notice that the Real Property is in violation of any order, judgment, injunction, award or decree of any court or agency of competent jurisdiction or any other requirement of any governmental authority or arbitrator or Board of Fire Underwriters applicable to the Real Property.

e. No Leases/Rights of Third Parties. There are no leases, licenses or other rights of third parties to occupy or use the Real Property or any portion thereof, except for the mailboxes, which shall remain on the property where located or be moved by mutual agreement to another location on the City property or Purchaser's adjacent property.

f. Special Assessments. Seller has not received any notice or information concerning any assessments for improvements (site or area) which have been or are to be installed by any public authority, the cost of which is to be assessed in whole or in part against any part of the Real Property.

g. Authority to Contract. Neither this Agreement nor anything provided to be done hereunder, or required to be done hereunder to effectuate the transaction contemplated hereunder, by Seller, including but not limited to the conveyance of the Property, will violate any contract, agreement or instrument to which Seller is a party to and/or which affects the Property.

h. Recapture Agreements. There are no obligations in connection with the Real Property for any so called "recapture agreements" involving refund, participation or payment of monies, nor any charge for work or services done, or to be done, upon or relating to or benefitting, whether now or in the future, the Real Property.

Seller shall be required to state in writing prior to Closing exceptions to the above listed representations, warranties, and covenants, in which case Purchaser may (i) terminate this Agreement if such exceptions are not reasonably acceptable, (ii) elect to close this transaction notwithstanding such exceptions, and/or (iii) pursue any and all other remedies available to Purchaser at law or in equity. The representations and warranties contained in this Agreement shall survive the Closing and the recordation of the Deed. Any liability of Seller arising in connection with the representations and warranties contained in this Agreement, however, shall terminate three hundred sixty five (365) days from the Closing Date, except for any claims asserted prior to the expiration of such three hundred sixty five (365) day period.

Section 8. Default. Seller shall be in default under this Agreement (i) if Seller breaches any representation or warranty of Seller contained in this Agreement, (ii) if Seller fails to timely perform any of its covenants, agreements, and/or obligations contained in this Agreement, (iii) if, as of Closing, there exists any unpermitted title and/or survey exceptions, and (iv) if any of the conditions set forth in Section 5 above or elsewhere contained in this Agreement are unsatisfied as of Closing as the result of Seller's action or inaction. Purchaser shall provide Seller with written notice of default and Seller shall be entitled to cure any such default within ten (10) days of receipt of Purchaser's notice of

default. In the event of an uncured default by Seller under this Agreement and the Redevelopment Agreement, Purchaser shall, notwithstanding anything to the contrary contained in this Agreement, have all remedies specified in this Agreement and all other remedies available to Purchaser at law or in equity, including without limitation, specific performance. The recitation of a specific remedy in this Agreement shall not exclude any and all other remedies available to Purchaser at law or in equity.

Purchaser shall be in default under this Agreement if Purchaser breaches any representation or warranty of Purchaser herein contained in this Agreement or if Purchaser fails to timely perform any of its covenants, agreements, and/or obligations contained in this Agreement. In the event of a default by Purchaser under this Agreement which is not cured within ten (10) days of written notice of default received by Purchaser from Seller, Seller's sole and exclusive remedy hereunder shall be to terminate this Agreement by notice to Purchaser, whereupon all rights, duties and obligations of the parties under this Agreement shall terminate.

The default provisions shall be construed in harmony with and subject to the terms of the Redevelopment Agreement.

Section 9. Miscellaneous.

a. Possession. Possession of the Real Property shall be delivered to Purchaser on the Closing Date.

b. **Attorney Fees.** In the event that a party hereto is in default of its obligations herein contained and the non-defaulting party sues to enforce its rights hereunder, the defaulting party shall pay all of the costs and expenses (including reasonable attorney fees) incurred by the non-defaulting party in the enforcement of the terms and provisions of this Agreement, including causing the return and disbursement of the any monies held in trust to Purchaser if same is entitled to the return thereof.

c. Offer and Acceptance. Delivery by Purchaser to Seller of a copy of this Agreement executed by Purchaser shall constitute an offer to purchase the Property upon the terms and conditions herein set forth which offer shall be effective for a period of fifteen (15) full Business Days following the time of such delivery. If Seller fails to deliver a fully executed counterpart of this Agreement to Purchaser prior to expiration of such fifteen (15) full Business Day period, then at Purchaser's sole option, said offer may be revoked and rescinded in its entirety at any time thereafter, and upon such revocation and rescission, said offer and this Agreement shall have no further force or effect. The signature of the City Administrator shall be considered acceptance of the Agreement, provided that the Agreement is subject to the condition subsequent of the City Council’s approval at a regular or special public meeting.

d. Counterparts. This Agreement and any document or instruments executed pursuant hereto may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instruments.

e. Laws of Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. In case of litigation, venue for any proceedings arising under this Agreement shall be in Kane County, Illinois

f. Time of Essence. Time is of the essence of this Agreement.

g. Delivery of Property Free of Rights of Others. Seller shall deliver the Real Property at Closing, free and clear of any and all rights of third parties to occupy or use the Real Property other than Purchaser and/or affiliates of Purchaser identified in the Redevelopment Agreements, easements that are referenced in the Redevelopment Agreement or other written agreement between the parties.

h. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Purchaser, without the consent of Seller, may at any time on or after the date hereof assign all of its right, title, interest and obligations in and to this Agreement to its nominee and upon such assignment, Purchaser shall be relieved of any and all obligations and liability under this Agreement.

j. Costs. The parties agree that, being a municipal corporation, the transaction is not subject to state and county transfer taxes, and that there are no local real estate transfer taxes. Purchaser shall be liable for the premium for the extended coverage policy of title insurance and any endorsements thereto, its own legal counsel and consultant fees, all brokers, and the escrow fees. Purchaser shall also pay all costs associated with any financing, nominal recording fees, to the extent imposed upon Purchaser pursuant to local ordinance any municipal or local transfer taxes or the like, and its legal counsel and consultant fees. Seller and Purchaser shall each be responsible for paying their respective legal fees and costs, if any, outside of escrow.

k. Notices. All notices and demands given or required to be given by any party hereto to any other party ("notices") shall be in writing and shall be delivered in person or sent by telecopy with electronic confirmation of receipt thereof and with concurrent mailing by U.S. Postal Service delivery, or by a reputable overnight carrier that provides a receipt, such as Federal Express or UPS, or by registered or certified U.S. mail, postage prepaid, addressed as follows (or sent to such other address as any party shall specify to the other party pursuant to the provisions of this Section):

TO PURCHASER:

David Patzelt, President;
1 N. Washington, L.L.C.
17 N. First Street
Geneva, IL 60134
630-232-8570
email: dave_patzelt@shodeen.com

and:

Kate McCracken
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 E. Main St., Ste G
St. Charles, IL 60174
(630) 513-8700
kate@hmcpc.com

To City:

Laura Newman
City of Batavia
100 North Island Avenue
Batavia, IL 60510
email: cityadministrator@cityofbatavia.net

With a copy to:

City Clerk

City of Batavia
100 North Island Avenue
Batavia, Il 60510
email: cityclerk@cityofbatavia.net

ANY NOTICE REQUIRED FOR UNDER THIS AGREEMENT MAY ALSO BE SENT BY EMAIL. All notices delivered in the manner provided herein shall be deemed given upon actual receipt (or attempted delivery if delivery is refused).

Business Day. For purposes of this Agreement, "business day" or "Business Day" shall mean Monday through Friday, excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and other legal holidays normally observed by business offices government offices, and/or banking offices.

Section 10. Broker. Seller represents and warrants that it has not dealt with any broker in connection with this Agreement and/or the transaction contemplated herein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

PURCHASER:
1 N. WASHINGTON, LLC., AN ILLINOIS LIMITED LIABILITY COMPANY

BY: _____
ITS: _____
NAME: _____

SELLER:
CITY OF BATAVIA, AN ILLINOIS MUNICIPAL CORPORATION

BY: _____
ITS: _____
NAME: _____

EXHIBIT K

SSA

CITY OF BATAVIA
ORDINANCE (Ordinance Number)
AN ORDINANCE ESTABLISHING SPECIAL SERVICE AREA NUMBER (SSA Number) (SUBDIVISION Name and Unit Number)

ADOPTED BY THE
MAYOR AND CITY COUNCIL
OF THE
CITY OF BATAVIA
THIS (Date) DAY OF (MONTH), (Year)

Published in pamphlet form
by authority of the Mayor
and City Council of the
City of Batavia,
Kane County, Illinois, this
(DATE) day of (MONTH), (YEAR)

ORDINANCE (Ordinance Number)
AN ORDINANCE ESTABLISHING SPECIAL
SERVICE AREA NUMBER (SSA Number)
(1 N. WASHINGTON REDEVELOPMENT)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Authority to Establish Special Service Area.

Special Service Areas are established pursuant to Article VII, Section 7, of the 1971, Illinois Constitution and the Special Service Area Tax Law (65 ILCS 200/27-5 et seq.).

SECTION 2: Findings.

A. The question of the establishment of the Area hereinafter described as a Special Service Area is considered by the City Council pursuant to an Ordinance entitled, "An Ordinance Proposing Establishment of a Special Service Area (Special Service Area No. (SSA Number) in the City of Batavia, Kane County, Illinois, and Providing for a Public Hearing and Other Procedures in Connection Therewith", adopted (Date of Proposing Ord), and is considered pursuant to a Hearing held on (Hearing Date), by the City Council, pursuant to Notice duly published in the (Newspaper), a newspaper published in the City of Batavia, at least fifteen (15) days prior to the Hearing, and pursuant to Notice by mail addressed to the person or persons or trustee in whose name the general taxes for the last preceding year were paid on each lot, block, tract or parcel of land lying within the Special Service Area. Said Notice was given by depositing said Notice in the United States Mails not less than ten (10) days prior to the time set for Public Hearing. A Certificate of Publication of said Notice and Receipts of Mailing of said Notice are attached to this Ordinance as Exhibits 1 and 2; said Notices conformed in all respects to the requirements of Section 5 of Public Act 78-901, aforesaid.

B. That a Public Hearing on the questions set forth in the Notice was held on (Hearing Date). All interested persons were given an opportunity to be heard on the question of an annual tax for maintenance of said basins, as set forth in the Notice. The Public Hearing was adjourned at (Time) p.m. on (Hearing Date).

C. That after considering the information, as presented at the Public Hearing, the City finds that it is in the public interest and in the interest of the City of Batavia Special Service Area No. (SSA number) that said Special Service Area, as hereinafter described, be established.

D. Said Area is compact and contiguous and constitutes a unique residential area of Batavia.

E. It is in the best interests of said Special Service Area that the furnishing of the municipal services proposed be provided. The proposed municipal services are unique and in addition to the municipal services provided to the City of Batavia as a whole.

SECTION 3: The City of Batavia Special Service Area No. (SSA number) established.

A Special Service Area to be known and designated as "City of Batavia Special Service Area No. (SSA number)" is hereby established and shall consist of the territory described on Exhibit 3 attached hereto.

SECTION 4: Purpose of Area.

City of Batavia Special Service Area No. (SSA number) is established to provide special municipal services to the Area in addition to services provided to the City generally. The purpose of the formation of the City of Batavia Special Service Area No. (SSA number) is to provide special municipal services to the Area in connection with the redevelopment of the property, including but not limited to a public parking facility and associated public improvements, including streetscape improvements and landscaping, all of which is pursuant to the terms of a certain Redevelopment Agreement (1 N. Washington Avenue) between the owners of the Property and the City of Batavia dated _____, 2016 ("Redevelopment Agreement").

Annual taxes may be levied for the special services enumerated herein, on property in said Special Service Area No. (SSA number), for said Special Service Area, in addition to all other City taxes pay the difference between in keeping with the terms of the Redevelopment Agreement the tax increment generated from the Project, as defined in the Redevelopment agreement, and the debt service payments when those payments are due; provided, that the special annual taxes shall be limited so that the total of said tax does not exceed an annual amount of fifteen dollars and no cents ($15.00) per $100.00 of assessed value, as equalized, to be levied against the property included in Special Service Area No. (SSA number).

SECTION 5: Effective Date.

This ordinance shall become effective from and after its passage, approval and publication in pamphlet form in the manner prescribed by law.

PRESENTED to the City Council of the City of Batavia, Illinois, on the (Date)th day of (Month), 2016.

PASSED by the City Council of the City of Batavia, Illinois, on the (Date)th day of (Month), 2016.

APPROVED by me as Mayor of said City of Batavia, Illinois, on the (Date)th day of (Month), 2016.

Ayes _____
Nays _____
Absent _____
Abstentions _____
Total Holding Office _____

Prepared by and after recording return to: Kevin G. Drendel, Batavia Government Center, 100 N. Island Ave., Batavia, Illinois 60510

EXHIBIT 1

CERTIFICATE OF PUBLICATION

TO BE INSERTED LATER

EXHIBIT 2
RECEIPT OF MAILING

(PERSON MAILING NOTICES), being first duly sworn on oath, states that s/he did deposit a copy of the document hereinafter specified in the United States Post office Box in the City of Batavia, Kane County, Illinois, certified with the U.S. postage fully prepaid thereon, on the date hereinafter set forth, enclosed in an envelope properly and securely sealed and plainly addressed to the person or persons hereinafter specified:

Description of Document:	Notice of Hearing - SSA #(SSA number)
Date of Mailing:	(Date)
Addressed to:	
PIN	Property Owners

Subscribed and sworn to before
me this (Date)

_____
Notary Public

EXHIBIT 3
(LEGAL DESCRIPTION)
(Subdivision)

(Legal Description)

EXHIBIT L

Letter of Performance and Payment Bond

UNDERTAKING IN LIEU OF COMPLETION & PAYMENT BOND

STANDARD FORM OF PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____ a corporation organized under the laws of the State of _____ and licensed to do business in the State of Illinois, as Principal, and ___[Developer]_____ a corporation organized and existing under the laws of the State of Illinois, with authority to do business in the State of Illinois, as Surety, are held and firmly bound unto the City of Batavia, State of Illinois, in the penal sum of _____Dollars ($_____), lawful money of the United States, well and truly to be paid unto said City of Batavia, Illinois for the payment of which we bind ourselves, our successors, and assigns, jointly, severally, and firmly by these presents, being One Hundred Ten percent (110%) of the cost of the Public Improvements described herein.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that whereas, the said Principal has entered into a written contract with an Owner which is the City of Batavia, Illinois and acts through the City Council of the City of Batavia for the construction of the work designated **Insert Project Name** **("Public Improvements"),** which contract hereby is referred to and made a part hereof, as if written herein at length, and whereby the said Principal has promised and agreed to perform said work in accordance with the terms of said contract, and has promised to pay all sums of money due for any permitting, fees, labor, materials, apparatus, fixtures or machinery furnished to such Principal for the purpose of performing such work and has further agreed to pay all direct and indirect damages to any person, firm, company, or corporation suffered or sustained on account of the performance of such work during the time thereof and until such work is completed and accepted; and has further agreed that this bond (including the terms attached hereto as Exhibit "A") shall inure to the benefit of any person, firm, company, or corporation, to whom any money may be due from the Principal, sub-contractor, or otherwise, for any such labor, materials, apparatus, fixtures, or machinery so furnished and that suit may be maintained on such bond by any such person, firm, company, or corporation, for the recovery of any such money.

NOW THEREFORE, if the said Principal shall well and truly perform said work in accordance with the terms of said contract, and shall pay all sums of money due or to become due for any labor, materials, apparatus, fixtures, or machinery furnished to the

Contractor for the purpose of constructing such work, and shall commence and complete the work within the time prescribed in said contract in compliance with all applicable state and local laws, ordinances and regulations, and shall pay and discharge all damages, direct and indirect, that may be suffered or sustained on account of such work during the time of the performance thereof and until the said work shall have been accepted, and shall hold the aforesaid Owner and its or the Owner's agents harmless on account of any such damages, and shall in all respects fully and faithfully comply with all the provisions, conditions, and requirements of said contract, then this obligation to become void; otherwise, and until such time, is shall remain in full force and effect.

Approved this _____ day of

_____

A.D. 20__.

IN WITNESS WHEREOF, we have duly executed the foregoing obligation this _____ day of _____, A.D. 20__.

Batavia City Council
Governing Body of Owner

Corporate

By: _____

Name:_____

Jeffery D. Schielke, Mayor

By:_____

President

Attest:

Attest:_____

Secretary

For: _____

Surety_____

(Seal)

_____

Heidi Wetzel, City Clerk

By:_____

Attorney in Fact (Seal)

Municipal or Corporate Seal

By:_____

Attorney in Fact (Seal)

State of Illinois

SS.

County of Kane

Exhibit A

Bond Terms

Re: [*Project Name*]
Surety Bond # _____
For Account of _____
Amount $_____
Date _____ Expiration Date _____

The undersigned <*Surety Bond Company*> by <*Individual*>, its duly authorized agent, hereby establishes and issues this surety bond in favor of the City of Batavia in the amount of $_____, which represents One Hundred Ten Percent (110%) of the estimated cost of the Public Improvements described herein. This surety bond is issued for the purpose of guaranteeing the performance and payment of all of the work required to be performed to complete the Public Improvements and one- year maintenance obligations as required by City ordinance for the aforesaid Project in the City of Batavia, Illinois:

DIVISION "A" – SANITARY SEWERS
(engineer's estimate =) $_____

DIVISION "B" – WATER MAIN
(engineer's estimate =) $_____

DIVISION "C" – STORM SEWERS
(engineer's estimate =) $_____

DIVISION "D" – STREETS
(engineer's estimate =) $_____

DIVISION "E" –DETENTION BASIN
(engineer's estimate =) $_____

DIVISION "F" –MISCELLANEOUS IMPROVEMENTS
(engineer's estimate =) $_____

Total engineer's estimate = $_____

The costs of the foregoing improvements are detailed in the attached Engineer's Cost Estimate.

The undersigned agree that this surety bond shall remain in full force and effect and pertain to any and all amendments or modifications which may be made from time to time to the plans, specifications and cost estimates for said modifications.

In no event shall this surety bond or the obligations contained herein expire except upon sixty (60) days' prior written notice. Unless written notice is given at least sixty (60) days prior to the Expiration Date, the Expiration Date of this surety bond, it shall be automatically extended for

successive thirty (30) day periods. In no event shall the bond terminate without notice as specified herein.

This surety bond shall remain in full force and effect without regard to any default in payment of money owed to the surety by the bond principal and without regard to other claims which the surety may have against the bond principal until released by written notice from the City of Batavia, and no consent, acknowledgement, or approval of any kind from the Principal shall be necessary or required as a condition of honoring a claim on this surety bond as provided herein.

It is agreed that any one or more of the following shall be considered a default by the bond principal and shall entitle the City to file a claim on this surety bond accompanied by a written statement by an authorized representative of the City:

A. A written statement stating that the bond will expire within sixty (60) days or less and that the Developer has failed to deliver to the City Administrator evidence of a renewal bond, letter of credit or other acceptable guaranty of completion and payment; or

B. A written statement stating that all or any part of the improvements required to be constructed and completed in conjunction with the [Project Name] pursuant to the Developer's agreement with the City and the requirements of the City Code and other applicable law and regulations, have not been constructed and completed in the time required for completion by agreement or by ordinance; or

C. A written statement that all or any part of the costs, payments, permit fees, or other obligations required to be paid for or in conjunction with the Public Improvements have not been paid when due to be paid.

D. A written statement that that the public improvements or other improvements covered by this bond have not been paid liens or other claims by contractors, subcontractors or third parties have been threatened or filed.

E. A written statement that Principal has declared bankruptcy, is subject to a petition for involuntary bankruptcy or an assignment for the benefit of creditors or other written evidence of insolvency or inability to pay off debts and obligations as they come due.

WE HEREBY AGREE with the City of Batavia under and in compliance with the terms of this surety bond as follows:

The surety will, upon written declaration of default by the City to the bond principal and surety, either complete the improvement(s), or pay the City such amounts up to the penal sum of this bond, which will allow the City to complete the improvements, pay the person designated by the City to complete the improvements or pay the persons who have performed the work to complete the improvements and who have not been paid. Surety shall determine whether to honor the City's request for either payment or performance within thirty (30) business days.

This surety bond sets forth in full the terms of the undertaking between the surety and the City,

and such undertaking shall not in any way be modified, amended, amplified, nor shall it be limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

Claims on this surety bond shall be made by presenting the surety company with a letter from the City Clerk of the City of Batavia requesting payment or completion accompanied by a statement of an authorized representative of the City of Batavia certifying the basis for the default and request for payment or completion from this surety bond.

The undersigned agrees that this surety bond shall not be reduced or discharged except upon receipt of a certificate of an authorized representative of the City of Batavia certifying that this surety bond may be reduced and the amount by which this surety bond may be reduced. The outstanding balance of this surety bond shall be the face amount of this surety bond less any amount which is discharged upon certificate of the City Clerk; provided, however, the outstanding balance of this surety bond shall not be reduced to less than 10% of the initial face amount of the surety bond until the City Council accepts the aforementioned improvements or other surety has been substituted and a certificate of an authorized representative certifying that the surety bond has been released by the City Council. In no event shall the surety be liable for any amount in excess of the bond penal sum.
The obligation under this surety bond runs from Surety to the City, and the Principal is not a beneficiary and has no claim on the surety bond. In the event of any bankruptcy of the Principal, the funds available under this surety bond will not become a part of the Principal's bankruptcy estate and the surety bond will remain an obligation for the benefit of the City

All acts, requirements and other preconditions for the issuance of this surety bond have been completed.

We hereby engage with you that all requests for payment or completion in conformity with the terms of this surety bond will be duly honored.

<*surety bond company*>

By:_____
<*individual*>, Attorney-in-Fact

ATTEST:

By:_____
<*individual*>, Secretary

STATE OF ILLINOIS)
ss.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, _____, personally known to me to be the Attorney-in-Fact

of the <*surety bond company*>, and <*individual*>, personally known to me to be the Secretary of said institution, and who are personally known to me to be the same persons whose names are subscribed to the foregoing Surety Bond as such Attorney-in-Fact and Secretary, respectively, and caused the corporate seal of said <*surety bond company*> to be affixed thereto pursuant to authority given by the Board of Directors thereof, as their free and voluntary acts and as the free and voluntary act and deed of said institution.

Given under my hand and official seal
this ____ day of _____, 20__.

_____
Notary Public

EXHIBIT M

Memorandum of Recording

AFTER RECORDING RETURN TO:
CITY OF BATAVIA
100 NORTH ISLAND AVENUE
BATAVIA, ILLINOIS 60510

PIN(S):
_____

MEMORANDUM FOR RECORDING

1 NORTH WASHINGTON ST. REDEVELOPMENT AGREEMENT

BETWEEN

1 N. WASHINGTON, L.L.C.,
(AN ILLINOIS LIMITED LIABILITY COMPANY)

AND

CITY OF BATAVIA
(AN ILLINOIS MUNICIPAL CORPORATION)

MEMORANDUM FOR RECORDING
1 NORTH WASHINGTON ST.
REDEVELOPMENT AGREEMENT

THIS MEMORANDUM FOR RECORDING OF THE 1 NORTH WASHINGTON ST. REDEVELOPMENT AGREEMENT (this "Memorandum") is made and entered into by and between **1 N. WASHINGTON, L.L.C.,** an Illinois limited liability company ("Developer") and **CITY OF BATAVIA**, an Illinois municipal corporation ("City"), as of _____ , 2016, (the Developer and City are sometimes hereinafter together called the "Parties" or individually a "Party".

R E C I T A L S:

A. The Parties have entered into that certain written instrument captioned *"1 North Washington St. Redevelopment Agreement"* dated _____, 2016 (the "Redevelopment Agreement").

B. Pursuant to the Redevelopment Agreement, Developer and city have agreed to certain terms and conditions that relate to certain property legally described on **Exhibit A** to this Memorandum (the "Redevelopment Site").

C. The Parties wish to identify to future owners of the Redevelopment Site the obligations running to City and the encumbrances on the Redevelopment Site and to have such restrictions run with and bind the Redevelopment Site, as applicable, subject to the terms, provisions and limitations contained in the Redevelopment Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

1.01 Incorporation. All of the terms of the Redevelopment Agreement are fully incorporated herein by this reference thereto with the same force and effect as though restated herein. Defined terms in this memorandum are as defined in the Redevelopment Agreement. The Parties, and each successor thereof, shall make available a certified copy of the Redevelopment Agreement to any prospective purchaser who has entered into an agreement to purchase the Redevelopment Site, or any portion of it, from Developer, or as applicable Developer's successors and or assigns.

1.02. Effective Period. During the term of the Redevelopment Agreement, which begins on September ____, 2016, and runs through September ____, 2039, or until all of the bond obligations have been paid from the increased tax increment generated by the Redevelopment Site as provided in the Redevelopment Agreement' provided, however and notwithstanding any provision herein to the contrary, that the foregoing restrictions shall in any event be null and void on the earlier to occur of: (i) the date the Parties record a release of this Memorandum, and (ii) September ___, 2039, (the "Nullification Date"), and upon the Nullification date and thereafter this Memorandum shall no longer encumber the Redevelopment Site. For clarification, upon the Nullification Date, this Memorandum shall be null and void without the need to record a release.

1.03. Covenant of City. City covenants and agrees to sign a release of this Memorandum and cause same to be recorded upon payment of all bond obligations incurred by the City pursuant to Redevelopment Agreement having been paid from the increased tax increment generated by the Redevelopment Site and/or promptly following the Nullification Date, but failure to do same shall not affect the terms and provisions of the last sentence in Section 1.02 above.

ARTICLE II
Notices/ Successors and Assigns / Covenants to Run with the Land

2.01 Notices. All notices, demands and requests for information given or required to be given by any Party hereto to any other Party ("notices") shall be in writing and shall be delivered in person or sent by email or telecopy with electronic confirmation of receipt thereof and with concurrent mailing by U.S. Postal Service delivery, or by a reputable overnight carrier that provides a receipt, such as Federal Express or UPS, or by registered or certified U.S. mail, postage prepaid, addressed as follows (or sent to such other address as any Party shall specify to the other Party pursuant to the provisions of this Section):

To 1 N. Washington, L.L.C.:

1 N. Washington, L.L.C.,
17 N. First Street
Geneva, IL 60134
630-232-8570
email: dave_patzelt@shodeen.com

To City:

Ms. Laura Newman
City of Batavia
100 North Island Avenue
Batavia, IL 60510
email: cityadministrator@cityofbatavia.net

With a copy to:

City Clerk
City of Batavia
Batavia, Il 60510
email: cityclerk@cityofbatavia.net

All notices delivered in the manner provided herein shall be deemed given upon actual receipt (or attempted delivery if delivery is refused).

2.02 Successors and Assigns / Covenants to Run with Land. This Memorandum and the covenants, burdens, benefits and obligations created hereby shall inure to the benefit and burden, as applicable, and be binding upon each Party hereto and its successors and assigns, heirs, and personal representatives; and grantees and of all persons now or hereafter owning or claiming any interest in the Redevelopment Site, subject to the terms, provisions and time limitations of this Memorandum.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY:
CITY OF BATAVIA,
AN ILLINOIS MUNICIPAL CORPORATION

BY:_____
NAME: _____
TITLE: _____

DEVELOPER:
1 N. WASHINGTON, L.L.C.

BY:_____
NAME: _____
TITLE: _____

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

BE IT REMEMBERED, that on the____ day of September, 2016, before me, a Notary Public in and for said County personally appeared Laura Newman, the Administrator of the City of Batavia, an Illinois municipal corporation, who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his free and voluntary act and deed as said Administrator for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal on the day and year first above written.

My commission expires: _____
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

BE IT REMEMBERED, that on the____ day of September, 2016, before me, a Notary Public in and for said County personally appeared Dave Patzelt, the President of 1 N. Washington, L.L.C., who acknowledged that the signing thereof was the duly authorized act and deed of said corporation and his free and voluntary act and deed as said President for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal on the day and year first above written.

My commission expires: _____
Notary Public

Exhibit N

Priority Reimbursement Schedule

TIF Reimburseables

Priority		Estimated Amount
1	Estimated Cost of bond issuance	$ 200,000
2	County transportation impact fee	$ 235,000
3	Developers architectural plans, engineering, financial consulting, etc	$ 1,800,000
4	Parking deck construction cost	$ 10,000,000
5	Mass excavation	$ 1,000,000
6	Soil erosion	$ 50,000
7	Storm and drainage	$ 150,000
8	Sanitary	$ 25,000
9	Streetscape	$ 400,000
10	Roadway improvements	$ 250,000
11	Developers Construction Engineer	$ 125,000
12	Developer Loan and Equity Raise Fees	$ 785,636
13	Developer interest on construction financing	$ 1,073,867
14	Developer fee (maximum 10% of project costs)	$ 4,047,000
15	30% of Developer permanent financing interest	$ 3,000,000
	Total of TIF Eligible Costs	$ 23,141,503
	Maximum Reimbursement from General Obligation Bonds	$ 16,000,000

Revised 1/20/17

EXHIBIT O

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this "Agreement"), dated as of ___, 2019 is made by **1 N. WASHINGTON, L.L.C.**, an Illinois limited liability company (the "Developer") and the **CITY OF BATAVIA**, an Illinois municipal corporation, (hereinafter the "City" or the "Indemnitor").

R E C I T A L S:

A. Pursuant to that certain Second Amended and Restated Redevelopment Agreement (the "RDA") by and between the Developer and the City dated _____, 2019, the City is obligated to complete specific environmental remediation activities necessary to complete the Project, as that term is defined under the RDA, on that certain property legally described on Exhibit "A" attached hereto (the "Property").

B. As referenced in the reports attached hereto as Exhibit "B" (collectively, the "Reports"), the City has identified certain specific environmental conditions in need of remediation (the "Environmental Conditions").

C. As time is of the essence in moving the Project forward, the parties hereby agree to modify the timing and responsibility for the environmental cleanup as more specifically described in the RDA so that the Developer shall, undertake environmental cleanup after transfer of title of the Redevelopment Site to the Developer subject to the terms and conditions of this Agreement.

D. As a condition precedent to the Developer obtaining a loan commitment, completing drawings for the Project, bidding the Project, applying for permits and taking title to the Redevelopment Site, the City hereby agrees to indemnify and hold Developer and those interested parties claiming an interest in the Property by or through the Developer harmless from and against environmental conditions and costs incurred by Developer in remediating the environmental conditions that were intended to be the City's responsibility in the original RDA, obtaining a focused No Further Remediation letter from the IEPA and/or addressing any environmental conditions at, in or on the Property as of the date Developer takes title to the Property.

E. This Agreement is intended to induce the Developer to take title to the Property and to undertake the environmental cleanup that was originally to be the City's responsibility before transferring title to the Developer. The scope of this Agreement is limited to the contamination in the soil existing as of the time of the transfer of title.

F. In the event of termination of the Project, costs will be borne by the Parties according to Article 3.04 of the Second Amended and Restated Redevelopment Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the City hereby certifies, represents, covenants and agrees as follows:

1. **Definitions**: As used herein, the following terms shall have the meanings specified below:

1.1 The term "Agreement" shall mean this Environmental Indemnity Agreement and all modifications, supplements, and amendments thereto.

1.2 The term "De Minimis Amount" shall mean that small quantity of any Special Waste or Hazardous Substance as each term is defined by the Illinois Environmental Protection Act, (collectively "Environmental Laws" as hereinafter defined), which quantity is on the Property as of the date of title transfer, and which quantity is managed in a manner that both (i) does not constitute a violation or threatened violation of any Environmental Laws or require any reporting or disclosure under any Environmental Laws and (ii) is consistent with customary business practice for such operations in the State of Illinois.

1.3 The term "Environmental Claim" shall mean any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, inquiries, investigations, studies or notices relating to actual or the alleged existence of any Special Waste, Non-special Waste or Hazardous Substance on the Property or the alleged actual violation of any Environmental Law including without limitation those arising as a result of strict liability, whether under Environmental Law or otherwise,.

1.4 The term "Environmental Laws" shall mean any applicable federal, state or local statute, regulation, rule, code, ordinance, common law or requirement regulating, relating to, or imposing obligations, liabilities, or standards of conduct concerning pollution, natural resources, protection of human health, protection of the environment on, under or about the Property.

1.5 The term "Event of Default" shall mean any default or failure in performance of any provision of this Agreement.

1.6 The term "Hazardous Substances" shall have the meaning as defined by the Illinois Environmental Protection Act.

1.7 The term "Special Waste" shall have the meaning as defined by the Illinois Environmental Protection Act.

1.8 The term "Non-special Waste" shall mean certain non-liquid, non-hazardous industrial-process and pollution-control wastes which meet all of the requirements of Section 3.475(c)(1) of the Illinois Environmental Protection Act.

1.9 The term "Indemnified Parties" shall mean and include Developer, its members, managers and any person and entity identified in the RDA and this Agreement including, without limitation, any future lender who derives an interest from or through the Developer.

1.10 The term "Property" shall also mean the Redevelopment Site as defined in the RDA.

1.11 The term "Remediation" shall mean all work required by the IEPA and reduced to a written remedial action plan, as hereinafter defined, provided to the City setting forth the tasks required to obtain a focused No Further Remediation Letter for the Property based on the Reports and any additional work required by the IEPA as a result of the discovery of additional Hazardous Substance, Special Waste or non-Special Waste on the Property during cleanup, excavation, demolition or construction that is discovered on the Property at any time provided it can be shown to have existed on the Property prior to the transfer of title to Developer. Developer and/or any other of the Indemnified Parties has the burden of proving the additional Hazardous Substance, Special Waste or non-Special Waste existed in the soil on the Property prior to the transfer of title to Developer.

1.12 The term "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any Special Waste, Non-Special Waste or non-De Minimis Amount of Hazardous Substance into the environment.

1.13 This Agreement incorporates all the terms and definitions of those terms as stated the RDA as amended unless expressly defined in this Agreement.

2. **Representations and Warranties**.

2.1 Except as disclosed in the Reports, Indemnitor represents to the Indemnified Parties that as of the execution date of this Agreement, (i) the Indemnitor has no knowledge of any Special Waste, Non-Special Waste or Hazardous Substances on the Property other than the Environmental Conditions identified in the Reports; (ii) neither the Indemnitor nor the Property is in violation of any Environmental Law applicable to the Property, and (iii) neither the Indemnitor nor Property, are subject to any existing, pending or threatened investigation pertaining to the Property by any federal, state or local governmental authority or are subject to any remedial obligation or lien under or in connection with any Environmental Law; provided, however, that the foregoing representation and warranty does not apply to De Minimis Amounts.

2.2 Except as specifically disclosed in the Reports, Indemnitor represents to the Indemnified Parties to the best of Indemnitor's knowledge that Indemnitor, including, without limitation, any officer, director, employee, agent of Indemnitor, has no knowledge or notice of the actual, alleged or threatened presence or Release of Special Waste, Non-Special Waste or Hazardous Substances in, on, around or potentially affecting any part of the Property or the soil, groundwater or soil vapor on or under the Property, or the migration of any Special Waste, Non-Special Waste or Hazardous Substance to any other property adjacent to or in the vicinity of the Property; provided, however, that the foregoing representation and warranty does not apply to De Minimis Amounts.

2.3 Developer represents that its intended future use of the Property will not result in the Release of any Special Waste, Non-Special Waste or Hazardous Substance other than De Minimis Amounts, in, on, around or potentially affecting any part of the Property or in the soil, groundwater or soil vapor on or under the Property, or the migration

of any Special Waste, Non-Special Waste or Hazardous Substance from or to any other property adjacent to or in the vicinity of the Property. To the extent Developer, its agents, employee, contractor or subcontractor contributes to a Release or migration of contaminated material as part of its construction, or, without limitation, any other activity, intentionally or otherwise, the City's indemnification obligation will be limited under this EIA or other agreement in which Developer and City are parties by either assigning the attendant costs and obligations to Developer or releasing the City from its indemnification obligations for removal or cleanup thereof.

2.4 As specifically disclosed in the Reports, City is aware of the Environmental Conditions on the Property and agrees and acknowledges that it shall be responsible for remediation of the Environmental Conditions in the Reports and any other non-De Minimis Amounts of Hazardous Substances and Special Waste requiring further remediation that are discovered in the process of doing the Remediation, excavation and/or work on the Property for the Project, wherein Remediation shall be deemed those activities required in order for the issuance of a focused No Further Remediation letter ("NFR Letter") by the Illinois Environmental Protection Agency in accordance with applicable Environmental Laws.

3. **Covenants of Indemnitor**.

3.1 Indemnitor, for so long as Indemnitor owns and has sole control over the Property, shall neither use nor permit any third party to use, generate, manufacture, produce, store, or Release, on, under or about the Property, or transfer to or from the Property, any Special Waste, Non-Special Waste or Hazardous Substance except De Minimis Amounts in compliance with all applicable Environmental Laws; provided, however, that if any third party under the control or authority of the Indemnitor, by act or omission or by intent or accident, allows any of the foregoing actions to occur, Indemnitor shall promptly remedy such condition, at their sole expense and responsibility. Furthermore, as long as Indemnitor owns and has sole control over the Property, Indemnitor shall not permit any environmental liens to be placed on any portion of the Property.

3.2 City shall comply and require all occupants of the Property, regardless of length of occupancy, to comply with all Environmental Laws governing or applicable to Special Waste or Hazardous Substances, including those requiring disclosures to prospective and actual buyers of all or any portion of the Property.

3.3 During the time that Indemnitor owns the Property, Indemnitor shall promptly notify Developer in writing if Indemnitor, including, without limitation, any officer, director, employee, agent, of any Indemnitor, has any actual knowledge or notice of any of the following: (i) that any statement in Section 2 of this Agreement is no longer accurate, (ii) any lien, action or notice affecting the Property or Indemnitor resulting from any violation or alleged violation of the Environmental Law, (iii) the institution of any investigation, inquiry or proceeding concerning Indemnitor or the Property pursuant to any Environmental Law or otherwise relating to Special Waste or Hazardous Substances, or (iv) the discovery of any Release or any other occurrence, condition or state of facts which

would render any representation or warranty contained in this Agreement incorrect in any respect if made at the time of such discovery.

3.4 During the time that Indemnitor owns the Property, Indemnitor's obligations under this Agreement shall not be diminished or affected in any respect as a result of any notice, disclosure or knowledge, if any, to or by any of the Indemnified Parties of the Release, presence, existence or threatened Release of Special Waste or Hazardous Substances, in non-De Minimis Quantities, in, on, around, or potentially affecting the Property or the soil, groundwater or soil vapor on or under the Property, or of any matter covered by Indemnitor's obligations hereunder.

3.5 Before title of the Property is transferred to Developer, and as a condition of that transfer, Indemnitor shall conduct and complete, in accordance with the requirements of the RDA and applicable Environmental Laws, actions to enroll the Property in the Illinois Environmental Protection Agency (the "IEPA") Site Remediation Program and shall complete all remedial tasks necessary to pursue a focused No Further Remediation letter ("NFR letter") for the Property for the Environmental Conditions identified in the Reports (a "Remedial Action Plan"), and Indemnitor shall apply for written assurance from the IEPA that a focused NFR letter shall be issued if the Remediation Plan is completed as proscribed therein (a "Comfort letter"). Indemnitor shall provide to Developer and its lender copies of the Remedial Action Plan, Comfort Letter, if any is obtained, and all results and reports relating to such Remedial Action Plan and related actions.

4. **Developer Rights**. Prior to the transfer of title to the Developer, the Developer shall have the right, but not the obligation, upon prior written notice to the City, to enter onto the Property at any reasonable time to take and remove soil or groundwater samples, conduct tests and/or site assessments on any part of the Property. Developer shall indemnify and hold the City harmless from and against any and all claims, damages and liabilities arising from the Developer's access to the Property, and shall restore the Property to the condition in which it existed prior to any sampling, testing or assessment.

5. **Indemnification**. Notwithstanding the transfer of title to Developer, Indemnitor shall indemnify and hold the Indemnified Parties harmless from, for and against any and all claims and, liabilities specifically and exclusively directly related to those Environmental Conditions identified in the Reports and any Special Waste, Non-Special Waste or non-De Minimis Amounts of Hazardous Substances discovered during the course of completing the cleanup in compliance with the Remedial Action Plan or that may be subsequently discovered prior to the issuance of an NFR Letter by the IEPA, or after issuance of the NFR Letter , provided that the Environmental condition that is discovered existed on the Property prior to transfer of title to the Developer. Developer and/or any other of the Indemnified Parties has the burden of proving the additional Hazardous Substance, Special Waste or non-Special Waste existed on the Property prior to the transfer of title to Developer. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to (i) matters resulting solely from the negligence or willful misconduct of any Indemnified Party, or (ii) matters resulting solely from the actions of Indemnified Parties taken after any such parties have taken title to, or exclusive possession of the Property.

6. **Reservation of Rights**. Nothing in this Agreement shall be construed to limit any claim or right which any Indemnified Party may otherwise have at any time against Indemnitor or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal, state or local Environmental Laws or other applicable law, regulation or ordinance.

7. **No Waiver; Rights Cumulative**. If any Indemnified Party delays or fails to exercise any right or remedy against Indemnitor, that alone shall not be construed as a waiver of that right or remedy. All remedies of any Indemnified Party against Indemnitor are cumulative.

8. **Successors and Assigns**. This Agreement is assignable by Developer to any Indemnified Parties.

9. **Survival.** Subject to the provisions of Paragraphs 5 and 6 of this Agreement, the indemnity obligations of Indemnitor under this Agreement shall be deemed to have been satisfied and this Agreement shall be deemed terminated upon issuance of the NFR Letter by the IEPA for the Property.

10. **Full Recourse**. The indemnity contained herein shall not be subject to any nonrecourse or other limitation of liability provisions contained in any document or instrument executed and delivered in connection with the loan and the liability of Indemnitor hereunder shall not be limited by any such nonrecourse or similar limitation of liability provisions.

11. **Misrepresentation**. If any material warranty, representation or statement contained herein shall be or shall prove to have been false when made or if Indemnitor shall fail or neglect to perform or observe any of the terms, provisions or covenants contained herein, the same shall constitute an Event of Default.

12. **Notices**. Any notice required or permitted in connection herewith shall be given in writing, in the manner required under the RDA, and the Indemnitor shall have no obligation to notify Developer's lender, it being the Developer's obligation to notify its lender.

13. **Reliance; Separate Action**. Indemnitor acknowledges that Developer and its lender that is providing financing for the Project has and/or will rely upon the representations, warranties and agreements herein set forth in closing and funding (or modifying as the case may be) the loan that the Developer will receive from its lender and that the execution and delivery of this Agreement is an essential condition but for which Developer's lender would not close or fund (or modify) any loan.

14. **Waiver**. Indemnitor waives any right or claim of right to cause any lender to proceed against any of the security for any loan before proceeding under this Agreement against Indemnitor.

15. **Construction**. In this Agreement, the word "person" includes any individual, company, trust or other legal entity of any kind. If this Agreement is executed by more than one person, the words "Indemnitor", "Guarantor" and "Developer" include the plural form of all such persons. The word "include(s)" means "include(s), without limitation," and the word "including"

means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa.

16. **Severability**. Every provision of this Agreement is intended to be severable. If any term, provision, section or subsection of this Agreement is declared to be illegal or invalid, for any reason whatsoever, by a court of competent jurisdiction, such illegality or invalidity shall not affect the other terms, provisions, sections or subsections of this Agreement, which shall remain binding and enforceable.

17. **Time; No Course of Dealing**. Time is of the essence of this Agreement, and of each and every provision hereof. The waiver by Indemnified Party of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach of breaches.

18. **Governing Law**. This Agreement and the transaction contemplated hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflict of laws principles.

19. **Counterparts**. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all such counterparts together shall constitute but one Agreement.

20. **Captions for Convenience**. The captions and headings of the paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

21. **JURISDICTION AND VENUE**. INDEMNITOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY INDEMNITOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS. INDEMNITOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY INDEMNIFIED PARTIES IN ANY OF SUCH COURTS. INDEMNITOR WAIVES ANY CLAIM THAT KANE COUNTY, ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR INDEMNITOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY INDEMNIFIED PARTIES OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY INDEMNIFIED PARTIES OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND INDEMNITOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

22. **WAIVER OF JURY TRIAL**. INDEMNITOR AND INDEMNIFIED PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG INDEMNITOR AND INDEMNIFIED PARTIES ARISING OUT OF OR IN ANY WAY

RELATED TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN INDEMNITOR AND INDEMNIFIED PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date set forth herein.

City of Batavia,
an Illinois municipal corporation

By: _____
Name: _____
Title: _____

DEVELOPER:

1 N. Washington, L.L.C., an Illinois limited liability company

By: Shodeen Group, L.L.C., a Delaware limited liability company, its Manager

By: Tri-City Land Management Company, L.L.C., an Illinois limited liability company, its Manager

By:

_____
Craig A. Shodeen, its Manager

_____
Beth C. Shodeen, its Manager

_____
Anna B. Harmon, its Manager

EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN ONE NORTH WASHINGTON PLACE CONSOLIDATION, BEING A SUBDIVISION OF PART OF BLOCK 7 IN THE ORIGINAL TOWN OF BATAVIA ON THE EAST SIDE OF THE FOX RIVER, BEING PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID ONE NORTH WASHINGTON PLACE CONSOLIDATION RECORDED MARCH 23, 2018 AS DOCUMENT 2018K013299, IN KANE COUNTY, ILLINOIS.

EXHIBIT B

Focused Site Investigation Report Dated December 2018 by Huff & Huff, a Subsidiary of GZA

Note: See full Report on file at City of Batavia for review of all exhibits attached thereto and incorporated therein by reference.