

TO: Dan Chanzit, Chairman, Government Services Committee

FROM: Laura Newman, City Administrator

DATE: April 9, 2021

RE: RES 21-033-R Authorizing Execution of an Access Agreement between Fifth Third Bank, National Association, 1 N. Washington, L.L.C., and the City of Batavia, Illinois

---

According to the terms of the Third Amended and Restated Redevelopment Agreement between 1 N. Washington, L.L.C. and the City of Batavia (the RDA), the Developer and its lender are required to enter into an agreement that provides the city with access to the redevelopment site for the purpose of completing the project in the event of Developer Default. This resolution seeks authorization for execution of the Access Agreement.

Although not required under the RDA, the Developer's lender, Fifth Third Bank, is requiring that the City be a party to the Access Agreement to formalize the rights and obligations of all three parties should the Access Agreement need to be invoked. It should be noted also that the bank, as further described in the Access Agreement has the right to complete the project itself utilizing the proceeds of the performance bond if it so chooses, but only after such time as it has made its first disbursement under the construction loan to the Developer.

Execution of the Access Agreement is both a requirement of RDA and required by Fifth Third as a condition of providing financing for the One Washington Place redevelopment project. If the Developer is unable to secure construction financing for the private portion of the project, this is an allowable cause for Developer to terminate the RDA.

The One Washington Place project will provide a 331-space public parking facility, an additional 16,000 square feet of commercial space and 186 luxury apartments. Adding hundreds of new residents to our downtown will be a game changer for the variety and number of businesses that a large mixed-use development like One Washington Place can provide. It is the fulfillment of the redevelopment objectives for TIF #6, taking what had been deteriorating blighted buildings and land and turning them into a new and valuable use through public/private partnership that is expected to create an additional \$1,000,000 in equalized assessed value.

With the approval of the Access Agreement, the Developer can now move forward with creating the construction drawings needed for the building permit application.

Staff recommends the Committee of the whole recommends approval by the City Council of Resolution 21-033-R, Authorizing Execution of an Access Agreement between Fifth Third Bank, National Association, 1 N. Washington, L.L.C., and the City of Batavia, Illinois.

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 21-033-R**

**AUTHORIZING EXECUTION OF AN ACCESS  
AGREEMENT BETWEEN FIFTH THIRD BANK,  
NATIONAL ASSOCIATION, 1 N. WASHINGTON, L.L.C.  
AND THE CITY OF BATAVIA, ILLINOIS**

WHEREAS, the City Council approved ORD 20-51 Authorizing Execution Of The Third Amended And Restated Redevelopment Agreement For One Washington Place (the “RDA”) with 1 N. Washington, L.L.C. (the “Developer”); and

WHEREAS, the RDA requires the Developer to provide an Access Agreement from its Lender that provides the City with the right to access the development property to complete the project in the event of the Developer’s failure to complete the project according to the schedule agreed upon in the RDA; and

WHEREAS, the Developer’s lender, Fifth Third Bank, National Association (the “Lender”), requires the City to be a party to the Access Agreement and to grant to the Lender the right to complete the project itself in a position ahead of the City and utilizing the resources provided by the surety of the performance bond; and

WHEREAS, the City will retain the right to complete the project ahead of the Lender in the case where the Lender has made less than \$100,000 of disbursements; and

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

SECTION ONE: The City Administrator is authorized to execute the Access Agreement attached hereto as Exhibit 1.

**CITY OF BATAVIA, ILLINOIS RESOLUTION 21-033-R**

**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, Illinois, this 19<sup>th</sup> day of April, 2021.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 19<sup>th</sup> day of April, 2021.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
<b>VOTE:</b>		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

\_\_\_\_\_  
Ellen Posledni, City Clerk

# EXHIBIT 1

## ACCESS AGREEMENT

This Access Agreement (the “Agreement”) is dated as of April \_\_, 2021, by and between the **CITY OF BATAVIA**, an Illinois municipal corporation (the “City”), **FIFTH THIRD BANK, NATIONAL ASSOCIATION** (the “Lender”), and **1 N. WASHINGTON, L.L.C.**, an Illinois limited liability company (the “Developer”) (collectively, the City, Lender, and Developer are referred to herein as the “Parties”).

## RECITALS

- A. As of the date of this Agreement, the City owns the real property commonly known as 1 North Washington Ave., Batavia, Illinois and more particularly described and/or depicted on the attached **Exhibit A** and also known as the Washington Square Development Site (the “Property”).
- B. On or about August 17, 2020, the City passed Ordinance No. 20-51 approving the Third Amended and Restated Redevelopment Agreement by and between the City and the Developer (the “RDA”), a Memorandum of which is recorded with the Kane County Recorder of Deeds as document #2020K054734.
- C. The RDA is intended to facilitate a public-private partnership and governs the redevelopment of the Property and construction by Developer of (i) a public parking facility (the “Parking Facility”) and certain other public improvements set forth in the RDA (collectively with the Parking Facility, the “Public Improvements”); and (ii) a mixed use development containing both residential dwelling units and commercial space (the “Private Improvements” and collectively with the Public Improvements, the “Project”).
- D. Prior to construction of the Project, the City plans to convey the Property to Developer.
- E. Subject to final underwriting and certain other terms and conditions, Lender intends to make a loan to Developer (the “Loan”), the proceeds of which shall be used by Developer in furtherance of the Project. The Loan is to be secured by a first lien Construction Mortgage, Security Agreement, Fixture Filing, and Assignment of Leases and Rents (the “Mortgage”) and an Assignment of Leases and Rents (jointly with the Mortgage, the “Security Instruments”) which shall encumber the Property.
- F. This Agreement is required pursuant to the terms of the RDA and as a condition precedent to Lender extending the Loan and is expressly contingent upon the Developer’s execution of the Loan Documents and the closing of the Loan.

## AGREEMENT

1. **Definitions.** All capitalized terms used herein that are not otherwise defined herein shall be deemed to have that meaning set forth in the RDA. All other capitalized terms used and not otherwise defined in this Agreement shall have the following meanings

“City’s Completion Conditions” shall mean the conditions to the City’s exercise of its Completion Rights set forth in the attached **Exhibit B**.

“City’s New Schedule” means the updated construction schedule for the City’s completion of the Project defined in the attached **Exhibit B**.

“Completion Bond” means the performance surety or surety instrument provided by Developer to the City in accordance with the RDA and in substantially the same form as set forth in Exhibit F thereto.

“Completion Default” means a failure by Developer to complete construction of the Project within forty-two (42) months from the date the construction permit is issued (excepting periods of delay that are beyond Developer’s control as set forth in Section 5.02 of the RDA).

“Completion Rights” means the rights set forth in Section 5.07(d) of the RDA upon a Completion Default to (i) demand and obtain from Developer access to the Property and (ii) complete construction of the Project at the City’s sole cost and expense or through the use, in whole or in part, of the Completion Bond.

“Construction Completion” means the date on which all of the following events have occurred: (i) construction of the Project is substantially complete, lien-free and defect free, to the reasonable satisfaction of the Lender and City and certificates of occupancy or the functional equivalent thereof issued by the City have been issued for the Project; (ii) the applicable architect has issued a certificate of completion in the form of AIA Document G704 or a substantially similar form reasonably acceptable to the Lender; and (iii) all amounts owing to all contractors, materialmen, suppliers, and any other party for the construction of the Project have been paid in full (subject only to holdbacks for “punch list items”, retention amounts, and liens which the Title Company has insured over as approved by Lender).

“Date-Down Endorsement” means an endorsement to Lender’s title policy insuring the Mortgage as a valid first, prior and paramount lien on the Property and deleting all exceptions and objections relating to any right to assert claims for mechanics’ liens on account of labor and/or materials furnished to the Property up to the date of the endorsement.

“Disbursement Date” means the day upon which the Lender makes its first disbursement of Loan proceeds pursuant to the Loan Documents.

“Loan Documents” shall mean all documents evidencing and/or securing the Loan, including without limitation the Security Instruments, a Promissory Note executed by Developer in the amount of the Loan, a Construction Loan Agreement, certain guaranties, and other related documents required by the Lender.

“Payment Obligations” means all payments due and owing to Lender pursuant to the Loan Documents, including without limitation principal and interest.

“Plans” means the detailed plans and specifications and/or project manual for the construction of the Project, prepared in accordance with the terms of the agreements by and between Developer and the architect and/or engineer approved by Lender under the Loan Documents, including any shop or field drawings made in furtherance thereof, together with any changes made therein.

“Surety” means the principal/obligor/issuer under the Completion Bond.

2. **RDA Provisions.**

(a) Assignment by Developer. The City consents to the Assignment notwithstanding any terms to the contrary contained in the RDA and represents and warrants that the RDA

contains all agreements between the City and Developer concerning the Property or the Project.

- (b) Modification/Enforcement/Termination of the RDA. For so long as any obligations remain outstanding to Lender under the Loan Documents:
  - (i) All liens and security interests of the City in the Property shall be subordinate to the Security Instruments and Loan Documents;
  - (ii) The RDA shall not be terminated, amended, or modified in any material respect without the prior written consent of Lender, which consent shall not be unreasonably withheld;
  - (iii) The City shall not take any enforcement action in response to a default by Developer under the RDA until such time Lender has received written notice of such default and had a reasonable period of time in which to cure such default if it so chooses; and
  - (iv) The City shall not be entitled to exercise the right to terminate the RDA or to declare the Developer in default of the RDA as a result of a foreclosure or any other enforcement action filed by Lender in connection with an Event of Default under the Loan Documents.

3. **Loan & Construction Matters.**

- (a) Closing Conditions. The Parties agree and acknowledge that Lender is under no commitment to make or close on the Loan until it has confirmed that all conditions to making the Loan between Lender and the Developer have been satisfied in Lender's sole and absolute discretion, including without limitation:
  - (i) The City's written consent to the collateral assignment from Developer to Lender of Developer's rights under the RDA and to the granting and recording of the Security Instruments; and
  - (ii) Receipt of a fully executed copy of this Agreement.
- (b) Disbursement Conditions. The Parties also agree and acknowledge that Lender shall not make the first disbursement of Loan proceeds for construction until it has confirmed that all conditions thereto set forth in the Loan Documents have been satisfied in Lender's sole and absolute discretion, including without limitation all the following:
  - (i) receipt of written confirmation from the City's City Administrator or his or her designee that there exists no default or event giving rise to a default under the RDA;
  - (ii) the entire amount of cash equity Developer is required by Lender to contribute to the Project has been disbursed in accordance with the Loan Documents;
  - (iii) receipt from Developer of a rider from the Surety under the Completion Bond reasonably acceptable to all Parties in favor of Lender, entitling Lender to the same rights and benefits as the City under the Completion Bond in the event Lender elects to take over construction of the Project pursuant to the terms hereof; and

- (iv) construction on the Project has progressed in substantial accordance with the percentage of completion set forth in the applications for payment (AIA Form G702-G703) submitted by Developer to Lender.
- (c) Assignment of Plans and Specifications. As part of the Loan closing, Developer shall assign the Plans to Lender and the City in order to allow either of them to complete the Project as set forth in this Agreement, the RDA, or, with respect to Lender, the Loan Documents, along with a consent thereto executed by the Architect and/or Engineer, as applicable.

4. **Completion Default; Completion Rights.**

- (a) Notice of Default. Upon the occurrence of a Completion Default, the City shall provide written notice to Developer and Lender of such default (each, a "Completion Default Notice").
- (b) City's Right to Complete. In the event that Lender informs the City that Payment Obligations of \$100,000.00 or less remain outstanding as of the time it receives a Completion Default Notice, the City shall be entitled to exercise its Completion Rights: (i) at the City's sole cost and expense or through the use, in whole or in part, of the Completion Bond; and (ii) without the requirement to satisfy the City's Completion Conditions.
- (c) Lender's Right to Complete. From and after the Disbursement Date, in the event that Payment Obligations in excess of \$100,000.00 remain outstanding as of the time Lender receives a Completion Default Notice, then all of the following shall apply:
  - (i) Lender shall have thirty (30) days after its receipt of a Completion Default Notice to provide written notice to the City that Lender intends to seek the appointment of a Receiver to take over and finish the Project.
  - (ii) Thereafter, Lenders shall have forty-five (45) days after the City's receipt of such notice from Lender in which to: (A) file a lawsuit to foreclose the Mortgage and (B) in connection therewith, seek the appointment by the court of a court-appointed receiver (a "Receiver") for the Property.
  - (iii) In the event either that (A) a Receiver is not appointed within forty-five (45) days after the filing of Lender's foreclosure lawsuit or (B) Lender has decided not to move forward with the Project, Lender may notify the City that it no longer intends to seek a Receiver or to finish the Project. In such event, the City would be entitled to exercise its Completion Rights under the terms of this Agreement following delivery of written notice thereof to Lender and Developer.
  - (iv) If a Receiver is appointed, Lender and/or the Receiver will have thirty (30) days from the date of such appointment in which to (A) evaluate the status of the Project and the condition of the Property; (B) determine, in consultation with Lender, how best to proceed; and (C) either (1) re-commence construction of the Project and/or (2) provide a revised reasonable construction schedule for the entire Project (the "Lender's New Schedule") for the City's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. The approved Lender's New Schedule would replace any and all deadlines or schedules set forth in the RDA for construction of the Project.

- (v) All deadlines for performance by Lender under the RDA or this Agreement shall be extended as reasonably necessary to comply with any terms of this Agreement or any terms or conditions of the RDA expressly assumed by Lender's Receiver hereunder, including without limitation to allow Lender and/or Receiver to obtain court approval as necessary for such compliance.
  - (vi) Lender's decision whether to complete the Project shall be in its sole and absolute discretion.
  - (vii) The City may elect to pay to the Lender the entire outstanding Payment Obligations. Upon receipt of such payment in readily available funds, (A) Lender's right to complete the Project would terminate and; (B) Lender and the City would cooperate with each other to do all things reasonably necessary to transition control of the Project to the City, including without limitation obtaining any necessary court approvals; and (C) promptly thereafter, Lender would release the Security Instruments. All reasonable costs related to transitioning control of the Project to the City under this provision shall be payable by the City.
  - (viii) The Developer and the City shall take all steps reasonably necessary to provide Lender access to the Property in the event that the Lender undertakes to complete the Project.
- (d) Construction by Lender. In the event that Lender elects to complete the Project:
- (i) The Lender, through a Receiver shall comply with all material terms and conditions of the RDA related to construction of the Project, including without limitation Sections 1.05, 1.06, 1.07, 1.09, 1.10, and 1.11 of the RDA;
  - (ii) Except as expressly set forth above, the Receiver shall assume no other obligations under the RDA, including without limitation any indemnity obligations to City thereunder;
  - (iii) Lender, through a Receiver, shall be entitled to all the rights and benefits of Developer under the RDA with respect to the Project, including without limitation (i) the right to receive reimbursement from the City of all undisbursed TIF Reimbursable Costs up to the Maximum Reimbursable Amounts; and (ii) the reasonable cooperation in construction of the Project, including without limitation (x) securing the payment for the costs of Lender's completion of the Project under the Completion Bond and (y) issuing all required permits and certificates required for the Project, including without limitation certificates of occupancy for the Parking Facility and Private Improvements; and
  - (iv) After substantial completion of the Project and the recording of the Declaration, the Parking Facility shall be conveyed to the City as set forth in Section 1.10 the RDA.
- (e) Notwithstanding anything to the contrary herein, if the City or Lender decides to invoke the Completion Bond, all Parties acknowledge that: (i) the Surety may choose to complete the Project itself or instead to reimburse the City or Lender/Receiver; and (ii) in either scenario, the Parties agree to cooperate with all reasonable requirements of the Surety.

5. **Breach by Lender.** Upon the occurrence of any of the following events: (a) Lender or the Receiver discontinues or abandons construction for more than thirty (30) days or otherwise fails to adhere materially to Lender's New Schedule; (ii) Construction Completion is not achieved on or before the completion deadline set forth in the Lender's New Schedule; or (iii) Lender or the Receiver fails to comply with any other terms of this Agreement, then upon Lender's failure to remedy any such breach within thirty (30) days' written notice thereof, the City shall be entitled to exercise its Completion Rights upon Lender's failure to remedy any such breach within thirty (30) days' written notice thereof to Lender and the Receiver.

6. **Breach by City.** Upon the occurrence of any of the following events: (i) the City discontinues or abandons construction for more than thirty (30) days or otherwise fails to adhere materially to the City's New Schedule; (ii) Construction Completion is not achieved on or before the completion deadline set forth in the City's New Schedule; or (iii) the City fails to comply with any other terms of this Agreement or the City's Completion Conditions, then upon the City's failure to remedy any such breach within thirty (30) days' written notice thereof, the City's Completion Rights shall terminate and Lender, by itself or through a Receiver, shall have the right to take full possession of the Property, remove the City, its agents, and any of the City's Contractors from the Property, and complete construction of the Project.

7. **Miscellaneous.**

- (a) **Deadlines.** As used herein, wherever the term "reasonable" is used to describe a period of time in which a party is entitled to take action, such period shall include the time necessary to allow Lender and/or Receiver to obtain any court approval necessary for such action.
- (b) **Assignment.** This Agreement is intended only to convey those rights and obligations under the RDA to Lender and City, as applicable, as expressly set forth or referenced herein. As to Lender, such rights and obligations are undertaken only in its role as lender and not as property owner or in any other capacity, and this Agreement does not limit or modify the RDA's application or enforceability against the fee owner of the Property (whether Developer, Lender or its designee through foreclosure, or otherwise) except as expressly set forth herein.
- (c) **Release of Parking Facility.** Upon conveyance of the Parking Facility to the City under the terms and conditions of the RDA and this Agreement, Lender will, at Developer's expense, deliver to Developer or to the City an instrument which if duly recorded would operate to release the Parking Facility from the lien of the Security Instrument, provided that all of the following conditions shall have been met: (i) the Public Improvements shall have been completed to the satisfaction of Lender and the City; and (ii) Lender shall have received, at Developer's expense, a Date-Down Endorsement insuring the Mortgage as a valid first, prior and paramount lien on the Property, less and except the Parking Facility.
- (d) **Remedies.** No delay or failure to exercise any power or remedy shall impair any such right, power, or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therewith. Lender neither assumes nor has any obligations to declare an Event of Default under the Loan Documents, to seek the appointment of a Receiver, or to finish construction of the Project, the option to exercise such rights or declare an Event of Default resting in the sole and absolute discretion of Lender. Except as expressly set forth herein, Lender shall have no personal obligations or liabilities to the City or Developer with respect to the RDA, Project, Property, or Loan or any matter related thereto, and the City's recourse against Lender, if any, shall be limited to its exercise of the Completion Rights in accordance with this Agreement and Lender's interest in the Property.

- (e) Successors. The terms of this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto, including without limitation any person or entity who purchases the Project in foreclosure or otherwise acquires Lender's rights, title and interest in the Project, provided that Lender shall be released of any liability hereunder with respect to any act or omission that occurs after Lender sells or assigns Lender's rights, title and interest in the Project to an unaffiliated person or entity.
- (f) Notice. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express carrier, addressed in each case as follows:

To City: City of Batavia  
100 North Island Avenue  
Batavia, IL 60510  
Attn: City Administrator – Laura Newman  
Email: [lnewman@cityofbatavia.net](mailto:lnewman@cityofbatavia.net)

With copies to: City of Batavia  
100 North Island Avenue  
Batavia, IL 60510  
Attn: City Clerk – Ellen Posledni  
Email: [eposledni@cityofbatavia.net](mailto:eposledni@cityofbatavia.net)

and

Kevin G. Drendel  
111 Flinn Street  
Batavia, IL 60510  
Email: [KGD@batavialaw.com](mailto:KGD@batavialaw.com)

To Developer: 1 N. Washington, L.L.C.  
c/o Shodeen Group, L.L.C.  
77 North First Street  
Geneva, Illinois 60134  
Attn: David Patzelt  
Email: [dave\\_patzelt@shodeen.com](mailto:dave_patzelt@shodeen.com)

With a copy to: Hoscheit, McGuirk, McCracken & Cuscaden, P.C.  
1001 E. Main St., Suite G  
St. Charles, IL 60174  
Attn: Kate McCracken  
Email: [kate@hmcpc.com](mailto:kate@hmcpc.com)

To Lender: Fifth Third Bank, National Association  
222 South Riverside Plaza, 31<sup>st</sup> Floor  
Chicago, Illinois 60606  
Attn: Robert Macyauski  
Email: [robert.macyauski@53.com](mailto:robert.macyauski@53.com)

With a copy to: Miller, Canfield, Paddock and Stone, P.L.C.  
225 West Washington Avenue, Suite 2600  
Chicago, Illinois 60606  
Attn: Matthew C. Steele, Esq.  
Email: [steele@millercanfield.com](mailto:steele@millercanfield.com)

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third business day following the day sent or when actually received.

- (g) Conflict. In the event of a conflict between this Agreement and the RDA, the terms of this Agreement shall control. In the event of a conflict between this Agreement and the Loan Documents, the terms of the Loan Documents shall control.
- (h) Amendments. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all requirements of law.
- (i) Third Party Beneficiaries/ Joint Venture. As from the rights expressly provided to the City hereunder, no claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against any Parties hereto. Nothing contained herein shall be deemed or construed as creating a joint venture or partnership between any of the Parties hereto.
- (j) **JURY TRIAL WAIVER. THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.**
- (k) Counterparts. This Agreement may be executed in one or more counterparts, and by separate parties on separate counterparts, all of which shall constitute one and the same agreement. The signature of a party to any counterpart shall be sufficient to legally bind that party and the signature page(s) from any counterpart may be attached to any other counterpart in order to have a single document containing the signatures of all parties. This Agreement may be transmitted and/or signed by facsimile or e-mail transmission (e.g. "pdf" or "tif"). The effectiveness of any such signatures shall, subject to applicable law, have the same force and effect as manually-signed originals and shall be binding on all parties to this Agreement.
- (l) Access by the City. In the event that the City undertakes its Completion Rights pursuant to the RDA and this Agreement, Developer and Lender shall take all steps reasonably necessary to provide the City access to the Property, all at the expense of Developer and City.
- (m) RDA Obligation. Notwithstanding anything to the contrary in this Agreement, if the Lender becomes fee title owner of the Property, this Agreement shall not

operate to limit or modify the RDA's application or enforceability against Lender as fee owner.

(Signature pages to follow)

The Parties hereto have caused this Agreement as of the date first above written.

CITY:

**CITY OF BATAVIA**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

LENDER:

**FIFTH THIRD BANK,  
NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

DEVELOPER:  
**1 N. WASHINGTON, L.L.C.**,  
an Illinois limited liability company

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

Legal Description

LOT 1 OF ONE NORTH WASHINGTON PLACE CONSOLIDATION (RECORDED AS DOCUMENT NUMBER 2018K013299), 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, KANE COUNTY, ILLINOIS.

COMMONLY KNOWN AS 111-133 W. WILSON ST., 20 N. RIVER STREET, 1 N. WASHINGTON AV. (PINS 12-22-276-025 AND 12-22-276-026)

## Exhibit B

### City's Completion Conditions

For so long as the Security Instruments remain of record against the Property and Payment Obligations remain outstanding to Lender in excess of \$100,000.00, any exercise of the City's Completion Rights shall be subject to all of the following conditions/requirements:

1. The City shall have provided to Lender within forty-five (45) days after the date that the City becomes entitled to exercise its Completion Rights, and Lender shall have approved (which such approval may not be unreasonably withheld), all of the following:

(a) a line item budget for completion of the Project inclusive of all costs including, without limitation, all hard and soft costs of the Project and the sources of all funds required to pay all such costs;

(b) a detailed construction plan, including any updated construction schedule for the entire Project (the "City's New Schedule"), which shall include a proposed deadline for Construction Completion;

(c) for any general contractor, project manager, architect, or engineer (each, a "Contractor") that the City intends to engage other than those persons or entities approved by Lender under the Loan Documents, (i) a detailed resume of credentials and experience and (ii) financial statements for the prior two (2) fiscal years of any such proposed Contractor; and

(d) any and all other information and documents reasonably requested by Lender.

2. The Security Instruments shall at all times be preserved as first priority liens against the Property, except with respect to liens and encumbrances expressly permitted by Lender at the closing of the Loan pursuant to the Loan Documents;

3. If requested by Lender, with each payment for construction, the City shall provide to Lender a Date-Down Endorsement;

4. All work will be at the City's sole cost and expense and/or paid for with proceeds of the Completion Bond;

5. The City will keep the Lender regularly informed as to the status of construction, including, at a minimum, monthly construction progress reports, and shall allow Lender reasonable access to the Property to inspect construction, the status of the Project, and the Property;

6. The City shall maintain reasonable policies of insurance to Lender's satisfaction, including without limitation:

(a) a policy of general liability insurance for the City and each Contractor which names Lender as an additional insured;

(b) builder's risk insurance for the Property and Project; and

(c) any other insurance policies for the Project reasonably required by the Lender.

7. The City's work will be completed and constructed in accordance with all: (a) applicable laws and regulations; (b) reasonable requirements of Lender; and (c) material construction terms and conditions set forth in the Loan Agreement including without limitation the approval by Lender of any replacement general contractors; and

8. Upon Construction Completion, the City shall surrender possession of the Property and provide the following to Lender within sixty (60) days: (a) a Date-Down Endorsement; (b) as-built plans for the Project; (c) an as built survey showing the location of the completed Project; (d) written confirmation by the City that the Project has been completed in full to its satisfaction; and (e) full and complete unconditional lien waivers for all work completed or materials provided to the Project.