

**CITY OF BATAVIA**  
100 N. Island Avenue, Batavia, IL 60510  
(630) 454-2000 <http://cityofbatavia.net>

**Committee of the Whole Agenda**  
Tuesday, July 19, 2016  
7:30 PM Council Chambers 1st Floor

1. Roll Call
2. Items Removed/Added/Changed
3. Matters From The Public (For Items NOT On Agenda)
4. Resolution 16-64-R: Authorizing Execution Of A Master Services Agreement With EX2 Technology, LLC (Bob Rogde 7/6/16) PU

Documents:

[RES 16-64-R AUTHORIZE EXECUTION OF MASTER SERVICES AGREEMENT WITH EX2.PDF](#)

5. Resolution 16-61-R: A Resolution Expressing Official Intent Regarding Certain Expenditures To Be Reimbursed From Proposed Washington-Wilson TIF District Funds (A.k.a. Inducement Resolution) (Chris Aiston 7/14/16) CD

Documents:

[RES 16-61-R WASHINGTON-WILSON TIF.PDF](#)

6. Review Of Agreement Between The City Of Batavia And 1 N. Washington, LLC (TIF Working Budget And Redevelopment Agreement) (Chris Aiston 7/14/16) CD

Documents:

[REVIEW N WASHINGTON COW PACKET RE RDA AND WORKING BUDGET JULY18-16.PDF](#)

7. Discussion: Raising The Minimum Age To Buy Cigarettes From 18 To 21 In Batavia GS
8. Discussion: Strategic Planning And Retreat GS
9. Project Status
10. Other
11. Executive Session: Land Acquisition
12. Adjournment

# CITY OF BATAVIA

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**DATE:** July 6, 2016  
**TO:** Committee of the Whole - PU  
**FROM:** Robert Rogde  
**SUBJECT:** Resolution 16-64-R Authorizing Execution of Master Services Agreement with EX<sup>2</sup> Technology, LLC

EX<sup>2</sup> Technology, LLC is a young company with very experienced people. Staff would like to execute a Master Services Agreement with EX<sup>2</sup> so they can help us with communications projects. The representatives that we will be utilizing have a long history of successfully serving the City. These representatives worked previously with a company that the City still uses very successfully. Staff sees this opportunity to have two of these companies to help with communication projects. Attached is a brochure detailing the company.

Staff is recommending approval of Resolution 16-64-R Authorizing Execution of Master Services Agreement with EX<sup>2</sup> Technology, LLC.

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 16-64-R**

**AUTHORIZING EXECUTION OF MASTER SERVICES AGREEMENT WITH EX<sup>2</sup>  
TECHNOLOGY LLC**

**WHEREAS**, the City of Batavia owns and operates a fiber optic utility; and

**WHEREAS**, in connection therewith, it is necessary and appropriate to retain professional engineering services for the preparation of plans to upgrade and improve the fiber optic system; and

**WHEREAS**, the City of Batavia shall execute a Master Services Agreement with EX<sup>2</sup> Technology LLC for Professional Engineering Services; and

**WHEREAS**, EX<sup>2</sup> Technology LLC has the appropriate expertise and experience necessary to provide the professional engineering services for the fiber optic system; 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 1:** That the Mayor and City Clerk are hereby authorized execute a Master Services Agreement, attached hereto as Exhibit 1, for professional services related to expanding and improving the fiber optic system with EX<sup>2</sup> Technology LLC.

CITY OF BATAVIA, ILLINOIS RESOLUTION 16-64-R

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**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, Illinois, this 1st day of August, 2016.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 1st day of August, 2016.

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

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

ATTEST:

\_\_\_\_\_  
Christine Simkins, Deputy City Clerk

**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT entered into this First day of August, 2016 by the CITY OF BATAVIA, 100 North Island Ave, Batavia, IL 60510, hereinafter called the CITY, and EX2 Technology, LLC, 1044 N. 115<sup>th</sup> Street, Omaha, NE 68154, hereinafter called the CONSULTANT.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF CONSULTANT: The CITY, acting pursuant to its vested authority, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional design, engineering, surveying, environmental science or management services as requested by the CITY as more fully described and on the terms provided herein below. Robert Rogde or designated representative, will act as the liaison for the CITY and Mr. Joel Mulder, or designated representative, will act as liaison for the CONSULTANT for administration of this Agreement. This Agreement for Professional services can only be amended or revised by a written agreement signed by both parties.

The relationship of the CONSULTANT to the CITY shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and the CONSULTANT.

2. CHARACTER AND EXTENT OF SERVICES: The CONSULTANT shall perform certain professional design, engineering, surveying, environmental science or management services as requested. Such services may include, but are not limited to, the following types of work:
  - Engineering and surveying tasks for various municipal infrastructure projects
  - Development of studies, plans and reports
  - Design plans and specifications and contract documents
  - Resident engineering services during construction
  - Assistance with matters related to streams and wetlands
  - Reviews of various engineering plans on behalf of the city for both public and private improvements.

The CONSULTANT shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the

Agreement. The CONSULTANT shall obtain, at its own expense, all permits and licenses, if any, that may be required to operate the business of the CONSULTANT by federal, state, and local regulations and laws.

3. TASK ORDERS/SPECIFIC HOURLY RATE BASIS: Prior to commencement of any service to be performed through a task order, the CITY and CONSULTANT shall mutually agree upon and execute a task order for the specified service utilizing the general form of task order attached hereto as Exhibit "B" and by this reference incorporated herein. The task order shall describe the services to be provided, the time for performance of the service, the fee provisions for the services, and any provisions additional to this agreement. Execution by the CITY and CONSULTANT of subsequent task orders shall incorporate such subsequent task orders into this agreement.

Services to be performed on a specific hourly rate basis shall not require a task order, but shall only be performed upon authorization from the City Administrator or designated Department Head.

4. ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY: The CITY will provide or perform the following:

- a. Provide full information as to CITY requirements of the Project.
- b. Assist the CONSULTANT by placing at his disposal all available information pertinent to the site of the Project including previous reports, calculations, drawings, plats, reports, surveys, utility records, and any other data relative to design and construction of the Project.
- c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
- d. Advertise for hearings and proposals for bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.
- e. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

5. COMPLETION TIMES: The services called for under the various phases of Section 2 of this Agreement shall be completed as follows:

Services required for these tasks shall be completed within the times mutually determined by the CITY and the CONSULTANT as outlined in the applicable Task Order.

6. PROFESSIONAL FEES: For the services furnished by the CONSULTANT as described under Section 2 and Section 3 of this Agreement, the CITY agrees to pay the CONSULTANT the fees as set forth herein:

According to Exhibit A - Schedule of Hourly Rates on a time spent basis plus reimbursement for direct non-salary expenses such as laboratory testing, soil reports, reproduction expenses, out of town travel costs, long distance telephone calls, and outside consultants. Outside subconsultant's billings shall be marked up by a factor of \_\_\_\_ times the subconsultant billing.

7. PAYMENT: Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.
8. CITY PAYMENT SCHEDULE: The CITY will process for payment all statements received by the 10th day of each month for work done from the 1st day of the prior month.
9. FACILITIES TO BE FURNISHED BY THE CONSULTANT: The CONSULTANT shall furnish and maintain a central office, drafting space, and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established consulting engineering and surveying practice.
10. TERMINATION: The CITY or CONSULTANT may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, the CITY shall forthwith pay the CONSULTANT in full for all work previously authorized and performed prior to notice of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consulting engineer thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT. If no notice of termination is given, relationships and obligations created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.

The City may, at any time by written order, require the CONSULTANT to stop all or part of the services required by this Agreement. Upon receipt of such an order the CONSULTANT shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.

The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the CONSULTANT if the City is dissatisfied with the services of the CONSULTANT, provided that the City has previously notified the CONSULTANT of its dissatisfaction in writing stating the reasons therefor and allowing the CONSULTANT a minimum of thirty (30) days

to adjust and meet the City's expectations. The City further reserves the right to cancel the whole or part of the Agreement immediately for cause, if the CONSULTANT fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated, provided that notice is given in writing to the CONSULTANT of the default, and the CONSULTANT is given ten (10) days to cure the default or to begin curing the default and diligently continues to cure the default, if the default is of the nature that cannot be cured in such time. The CONSULTANT will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, floods or other similar acts or occurrences beyond the reasonable control of CONSULTANT.

Should any of the key personnel become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the CONSULTANT within thirty (30) days, and/or no temporary replacement personnel is provided by the CONSULTANT immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain an action to recover damages arising due to breach of contract

The City reserves the right to terminate in whole or any part of this Agreement, upon written notice to the CONSULTANT, in the event of default by the CONSULTANT. Default is defined as failure of the CONSULTANT to perform any of the material provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The CONSULTANT shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the CONSULTANT.

Upon termination, the CONSULTANT shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the CONSULTANT before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the CONSULTANT a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the CONSULTANT shall stop all work until said Agreement is reached.

11. ARBITRATION: All claims, disputes, and other matters in question arising out of, or related to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by applicable statute of limitations.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction.

In the event of a claim, jurisdiction and venue shall be in KANE County, ILLINOIS.

12. INDEMNIFICATION: The CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the CONSULTANT, its officers, agents and employees, in performing the work required by this Agreement. CONSULTANT shall not be liable for the negligent acts, omissions or failures of the City.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 policy limit subject to the terms and conditions of the policy.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of \$2,000,000.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Workers' Compensation insurance, as required by statute, by an insurance company licensed to write worker's compensation in the State of

Illinois. Employer's Liability, in an amount not less than \$500,000 each accident, \$500,000 disease-policy limit and \$500,000 disease-each employee.

The insurance provided by CONSULTANT shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The CONSULTANT shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the CONSULTANT allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The CONSULTANT and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the CONSULTANT is providing architectural, engineering, or surveying services, CONSULTANT shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the CITY requires contractors or subcontractors working on CITY projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the CITY as an insured, the CITY shall require said contractors or subcontractors to name the CONSULTANT as an additional insured.

13. ASSIGNMENT: The CONSULTANT shall not assign this Agreement, or any of the work or services covered by this Agreement, without the express written consent of the CITY.
14. STANDARD FOR PERFORMANCE: The CONSULTANT shall perform its services in accordance with generally accepted engineering and consultant standards and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement. The CONSULTANT warrants that it is technically qualified and entirely conversant with the requirements of the work to be provided pursuant to this Agreement; and that it has sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.
15. OPINIONS OF COST: The CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions, and its opinions of probable project or construction costs are to be made on the basis of its experience and qualifications and represents its judgment as an

experienced and qualified professional, familiar with the construction industry. However, the CONSULTANT cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from the opinions of probable costs prepared by it.

16. CONSTRUCTION AND SAFETY: The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incidental to work of contractors. It is the intent that the construction contractors will be held responsible for means and methods of construction and all safety issues.
17. SUBMITTAL REVIEW: Review of proposed contractor substitutions of materials and equipment by CONSULTANT is only for general conformance with the design concept of the Project and general compliance with the information given in the Contract Documents. The review does not affect the contractor's responsibility to perform all contract requirements.
18. OWNERSHIP AND REUSE OF DOCUMENTS: The originals of all documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement shall remain the property of CONSULTANT and are instruments of service in respect of the Project. The CONSULTANT shall provide the CITY with reproducible copies of all documents, drawings, specifications, and other work products that shall be the property of the CITY. Such documents, drawings, and specifications are not intended nor represented by the CONSULTANT to be suitable for reuse by the CITY or others on extensions of the services provided for the intended project or on any other project. The basic survey notes and sketches, charts, computations, and other data prepared or obtained by the CONSULTANT pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT, and the CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The above provisions also apply to electronic media files. The CONSULTANT shall provide the CITY with "AutoCAD drawing (dwg)" and "pdf" files of work performed for and paid for by the CITY at the request of the CITY, with the following provisions:

- a. The documents are protected by the rules and regulations of U.S. Copyright Laws.

- b. The use or reuse of original or altered electronic files by the CITY or others the CITY has released these files to, except for the City's purposes stated herein, will be at the CITY's own risk and liability.
- c. The CONSULTANT shall be indemnified and held harmless by the CITY to the fullest extent of the law from any and all claims, suit, liability, demands, or costs arising out of the use or release of the information contained on the files except for the City's purposes stated herein.
- d. The CONSULTANTS shall perform its services in accordance with generally accepted standards within the CONSULTANT's industry and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this agreement.
19. CITY-PROVIDED INFORMATION: CONSULTANT is entitled to rely on all information furnished or to be furnished by CITY. CITY agrees to hold harmless and indemnify CONSULTANT, its officers, agents, and employees from any and all claims of any kind arising out of or relating to any claims caused by an error or omissions in information provided by the CITY which were the cause of the claim for damages and provided, further, that the CONSULTANT's reliance on such information was reasonable under the circumstances. All information, worksheets, reports, design calculations, plans, and specifications as provided by the City shall be the sole property of the City unless otherwise specified in this agreement.
20. THIRD-PARTY BENEFICIARIES: It is recognized that the services performed by CONSULTANT are for the benefit of the CITY and no other party. There are no third party beneficiaries to this Agreement.
21. ACCESS TO RECORDS CLAUSE: The CITY and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examination, excerpt, and transcriptions.
- All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by the CONSULTANT for a period of three years after the completion of the CITY's project, unless a longer period is required to resolve audit findings or litigation. In such cases, the CITY shall request a longer period for record retention.
22. PROHIBITED INTERESTS: No member of the governing body of the CITY and no other elected or appointed officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or

indirect, in this contract; and the CONSULTANT shall take appropriate steps to assure compliance.

23. INTEREST OF CONSULTANT AND EMPLOYEES: The CONSULTANT covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed.

24. NOTICE: Any notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to CONSULTANT:           EX2 Technology, LLC  
  1044 N. 115<sup>th</sup> Street  
  Omaha, NE 68154

If to the CITY:                 City of Batavia  
  Attention: Robert Rogde  
  200 N Raddant Road  
  Batavia, IL 60510

with copy to:                 City Attorney  
  Attention: Kevin G. Drendel  
  111 Flinn Street  
  Batavia, IL 60510

25. NON-DISCRIMINATION: The CONSULTANT shall not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.

26. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the CONSULTANT as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement

27. BINDING EFFECT: This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.

28. LAW AND VENUE: This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement

shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

29. ILLINOIS PREVAILING WAGES: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply 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. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BATAVIA

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
(SEAL)

EX2 TECHNOLOGY, LLC

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
(SEAL)

EXHIBIT "A"

SCHEDULE OF RATES  
FOR  
EX2 TECHNOLOGY, LLC

NOTES:

1. THE RATES LISTED ABOVE ARE VALID UNTIL DECEMBER 31ST, 20\_\_.
2. THE RATES FOR REIMBURSABLES SUCH AS POSTAGE, DOCUMENT FEES AND IN-HOUSE PRINTINGS/DISCS ARE APPLIED BASED ON THE NORMAL ON-GOING CHARGES.
3. THE ABOVE RATES DO NOT INCLUDE THE SERVICES OF OTHER PROFESSIONALS OR COMPANIES REQUIRED TO PERFORM WORK TO ASSIST EX2 TECHNOLOGY, LLC GROUP IN THE PERFORMANCE OF A TASK ORDER.

EXHIBIT "B"

TASK ORDER NO. \_\_\_\_\_

REGARDING GENERAL AGREEMENT BETWEEN CITY OF BATAVIA

AND

EX2 TECHNOLOGY, LLC

Project Description:

Scope of Services:

Time of Performance:

Estimated Fee for Services:

Proposed: \_\_\_\_\_

Date

Approved:

City of Batavia

Date

# CITY OF BATAVIA

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**DATE:** July 14, 2016  
**TO:** Batavia City Council's Committee of the Whole  
**FROM:** Chris Aiston, Economic Development Consultant  
**SUBJECT:** Resolution 16-61-R, "Resolution Expressing Official Intent Regarding Certain Expenditures to be Reimbursed from the Special Tax Allocation Fund from Proceeds of an Obligation Issued, if any, or Other Resources from Such Fund in Connection with a Proposed Tax Increment Financing District Commonly Described as the Washington-Wilson District Redevelopment Project Area".

## **Summary**

Attached please find a proposed "Resolution Expressing Official Intent Regarding Certain Expenditures to be Reimbursed from the Special Tax Allocation Fund from Proceeds of an Obligation Issued, if any, or Other Resources from Such Fund in Connection with a Proposed Tax Increment Financing District Commonly Described as the Washington-Wilson District Redevelopment Project Area" (hereafter, "Resolution of Intent" or "Resolution"). This resolution is also commonly called the "Inducement Resolution".

Approving this Resolution is consistent with the requirements set forth in state statutes in advance of obligating any future TIF funds to pay eligible costs pursuant to said statutes, to include costs associated with completing the Redevelopment Project and Plan document, a requirement in advance of formally establishing a West Town Tax Increment Financing District. This Resolution also will serve as the official notification to other affected taxing districts of the City's intent to create the new TIF district.

## **Background**

You will recall that on July 12<sup>th</sup>, the COW reviewed the report, "Washington-Wilson Tax Increment Financing District Eligibility Findings". This report concludes that there is sufficient evidence to prove that the subject 4.65-acre proposed Washington-Wilson District redevelopment project area may be designated as a "conservation area" tax increment financing district, in accordance with applicable state statutes. Upon learning of these findings, and after being duly advised by staff, the COW determined that it was appropriate to undertake the next phase in pursuing formal TIF district designation for the Washington Wilson District, to wit: completing a Redevelopment Project and Plan document.

After its adoption, this Resolution will be mailed to all taxing bodies having jurisdiction over any property located within the boundaries of the proposed TIF district. This will action will serve notify these district's of the City's intent to further pursue a TIF designation for the Washington-Wilson District redevelopment area.

**Budget Impact**

Although actual approval of the Resolution of Intent itself will not result in any immediate cost implications for the City, as the City will begin to incur expenses (initially “soft cost”, e.g., professional financial/bond counsel, other legal counsel, engineering/survey services) toward further efforts required in TIF district designation, and as these expenses are typically found to be eligible for reimbursement from TIF funds, if and when a TIF district is designated and ultimately creates tax increment to provide such funds, such costs may be eligible for reimbursement.

**Staffing Impact**

There is sufficient staff time, including by extension, existing economic development consulting resources, to meet the above described charge in pursuing activities toward TIF district designation.

**Timeline for actions**

Approving the subject Resolution will allow the City and private property owners and/or development interests to begin incurring expenses that may ultimately be reimbursed through TIF increment funding.

**Staff recommendation**

Staff recommends that the COW recommend to full City Council approval of the Resolution 16-61-R, Resolution of Intent.

## Attachments:

Resolution, including Exhibit Legal Description of proposed Washington-Wilson District Redevelopment Project Area.

CC: Mayor Schielke  
Bill McGrath  
Department Heads

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 16-61-R**

**A RESOLUTION EXPRESSING OFFICIAL INTENT REGARDING  
CERTAIN EXPENDITURES TO BE REIMBURSED FROM THE  
SPECIAL TAX ALLOCATION FUND FROM PROCEEDS  
OF AN OBLIGATION ISSUED, IF ANY, OR OTHER RESOURCES FROM SUCH  
FUND IN CONNECTION WITH A PROPOSED  
TAX INCREMENT FINANCING DISTRICT COMMONLY DESCRIBED AS THE  
WASHINGTON-WILSON DISTRICT REDEVELOPMENT PROJECT AREA**

**WHEREAS**, the City of Batavia (the “City”) is contemplating the formation of a tax increment financing district commonly described as the Washington-Wilson District Redevelopment Project Area (the “District”) for certain real property depicted in Exhibit A, attached hereto and made a part hereof; and

**WHEREAS**, certain expenditures have been or may be made in anticipation of a Redevelopment Plan, or the initiation of a municipal or public redevelopment program prior to the formal adoption of the ordinances necessary to implement the full powers of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the “Act”) for the District. It is the intent of the Corporate Authorities to utilize the financing provisions of the Act to recapture such expenses, to the extent that they are eligible, if and when the necessary implementation ordinances are passed and certified; and

**WHEREAS**, certain other expenditures relating to projects to be undertaken on private properties within the proposed District (“Projects”) in anticipation of a Redevelopment Plan have been or will be paid within sixty (days) prior to or after the passage of this Resolution; and

**WHEREAS**, the aforesaid expenditures, and others as deemed eligible “Redevelopment Project Costs” (the “Expenditures”) defined by the Act, may be initially paid from the general fund of the City or by others; and

**WHEREAS**, the City reasonably expects to reimburse itself and/or others for the Expenditures from the Special Tax Allocation Fund for the District and/or with proceeds of an obligation to be issued by the City, if any, once a Redevelopment Plan has been adopted for the District, assuming that one is adopted.

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

**SECTION 1.** That the foregoing recitals are incorporated herein by this express reference.

CITY OF BATAVIA RESOLUTION 16-61-R

**SECTION 2.** That the City determines that the Expenditures were made in anticipation of a the formation and approval of a Redevelopment Plan and with the expectation that they are eligible to be reimbursed from the Special Tax Allocation Fund for the District and/or with proceeds of an obligation to be issued by the city, if any, assuming that the District qualifies under the Act and a Redevelopment Plan is approved for the District.

**SECTION 3.** That the maximum principal amount of such obligation expected to be issued, if any, for reimbursement of the Expenditures in connection with the Project is \$15,000,000.00.

**SECTION 4.** The name, address and phone number of the Municipal officer who can be contacted for additional information about the proposed redevelopment project area, and who should receive all comments and suggestions regarding the redevelopment of the area is Laura M. Newman, City Administrator, City of Batavia, 100 North Island Avenue, Batavia, Illinois, 60510, telephone #630-454-2060.

**SECTION 5.** The adoption of tax increment financing designation for the District would not result in the displacement of residents from ten or more inhabited residential units, and, therefore, no ordinance or resolution providing for a feasibility study involving housing impact study will be adopted.

**SECTION 6.** That the officials, officers and employees of the City are hereby authorized to take further actions as are necessary to carry out the intent and purpose of this Resolution.

**SECTION 7.** This Resolution of Intention shall not obligate or impose a duty upon the Corporate Authorities to employ or institute the power derived under the Act.

**SECTION 8.** That this Resolution is a declaration of official intent under Treas. Reg. Section 1.15-0-2 and under the Act.

**SECTION 9:** A copy of this Resolution shall be sent to each taxing district which may be affected by the adoption of the proposed TIF District immediately upon the passage of this Resolution.

**SECTION 10.** That this Resolution shall be in full force and effective immediately upon its passage in the manner provided by law.

CITY OF BATAVIA RESOLUTION 16-61-R

**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, Illinois, on the \_\_\_\_ day of August, 2016.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, on the \_\_\_\_ day of August, 2016.

---

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Fischer				
2	Callahan					Wolff				
3	Hohmann					Chanzit				
4	Mueller					Stark				
5	Botterman					Theelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
<b>VOTE:</b>		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

---

Christine Simkins, Deputy City Clerk

**EXHIBIT A**

WASHINGTON-WILSON DISTRICT  
TAX INCREMENT FINANCING DISTRICT LEGAL DESCRIPTION:

CITY OF BATAVIA-EAST SIDE TIF DISTRICT:

THAT PART OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 IN BLOCK 9 OF THE ORIGINAL TOWN OF BATAVIA, KANE COUNTY, ILLINOIS; THENCE SOUTHERLY, ALONG THE EASTERLY LINE OF WASHINGTON AVENUE TO THE NORTHERLY LINE OF WILSON STREET; THENCE EASTERLY, ALONG SAID NORTHERLY LINE, TO A POINT ON THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 10 FEET OF LOT 3 IN BLOCK 1 OF WILSON'S ADDITION TO BATAVIA; THENCE SOUTHERLY, ALONG SAID EXTENSION AND WEST LINE TO THE SOUTH LINE OF THE NORTH 158 FEET OF SAID LOT 3; THENCE WESTERLY, ALONG SAID SOUTH LINE AND ITS WESTERLY EXTENSION TO THE WEST LINE OF WASHINGTON AVENUE; THENCE NORTHERLY, ON SAID WEST LINE TO THE SOUTH LINE OF SAID WILSON STREET; THENCE WESTERLY, ALONG SAID SOUTH LINE TO A POINT THAT IS SOUTHERLY OF THE SOUTHEAST CORNER OF LOT 3 IN BLOCK 7 OF SAID ORIGINAL TOWN OF BATAVIA, SAID POINT BEING ON A LINE DRAWN AT RIGHT ANGLE TO THE NORTHERLY LINE OF SAID WILSON STREET; THENCE NORTHERLY, ON SAID LINE TO SAID SOUTHEAST CORNER; 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 WEST LINE THEREOF; THENCE CONTINUING WESTERLY, ON A LINE PERPEDICULAR TO SAID WEST LINE, TO THE WEST LINE OF RIVER STREET; THENCE NORTHERLY, ALONG SAID WEST LINE TO THE NORTH LINE OF STATE STREET EXTENDED WEST; THENCE EASTERLY, ALONG SAID EXTENSION AND SAID NORTH LINE TO THE POINT OF BEGINNING, ALL IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

CONTAINING 4.65 ACRES, MORE OR LESS.

# CITY OF BATAVIA

---

**DATE:** July 14, 2016  
**TO:** Committee of the Whole  
**FROM:** Chris Aiston, Economic Development Consultant  
**SUBJECT:** Draft City of Batavia and 1 N. Washington, LLC Redevelopment Agreement;  
Working Budget - Washington-Wilson TIF Redevelopment Project

## Summary

Per the COW discussion of July 12<sup>th</sup>, please find attached:

1. “Working Budget” concerning TIF-Eligible Costs in the subject redevelopment project.
2. “One North Washington Place (Proposed New TIF Project), Proposed Redevelopment Agreement (RDA) between City of Batavia and 1 North Washington, LLC (Developer);

Here attached is a copy of the “Working Budget” for the project. This spreadsheet identifies best estimates to date and is serving as the foundation for the City’s expectation in issuing General Obligation bonds in the amount not to exceed \$13,000,000 as set forth in the RDA (see Sect. 2.08, p. 14).

The following summarizes this spreadsheet for consideration:

1. TIF-Eligible Reimbursement Costs are articulated independently, separating what the City and Developer are to pay, respectively.
2. I have then assigned some kind of pro rata share as to the direct public improvement versus the private improvement:
  - a. Assigning 100% public improvement to the actual garage, streetscape and utility improvements, for example.
  - b. Assigning a 25/ 75% pro rata breakdown of benefit, where both the public improvement (essentially 25% of total cost) and private development (essentially 75% of total cost) benefit from the activity. This break down relates to items like mass grading/clearing, demolition, environmental remediation, fees, and soft costs, (e.g., architectural, engineering and legal fees, and financing costs). The rationale in utilizing a 25/75 pro rate breakdown is founded on estimates showing that the garage is approximately 25% of total project costs.

This spreadsheet indicates that the TIF increment will be reimbursing the developer approximately \$10.5M to construct improvements that directly benefit the public at large and *up to* another \$2.5M in TIF-eligible expenses that directly benefit his private development. Again, per state statute, these costs are reimbursement-eligible from TIF funds but are not solely attributable to a “public improvement”.

As staff indicated during that meeting, we are in the very final stages of coming to agreed language for the Redevelopment Agreement document and, per the commitment from staff during that meeting. Here too is attached is the document for your review, in its current draft form.

## **Action By COW**

Staff provides the attached information to further the COW's understanding of the proposed Redevelopment Agreement between the City and 1 N. Washington, LLC. Staff anticipates that the RDA, in its final form, will be ready for COW review and recommendation to City Council during the COW's scheduled July 26<sup>th</sup> meeting.

## **Attachments**

Working Budget, July, 2016

City of Batavia and 1 N. Washington, LLC Redevelopment Agreement (Draft)

CC: Mayor Schielke  
Department Heads

1 N. Washington TIF Redevelopment Costs  
Recognized TIF Reimbursement-Eligible Costs  
"Working Budget", July, 2016

Reimbursement-Eligible Redevelopment Project Costs Per 65 ILCS 5/11-74.4-3 (o) - By General Category	City Cost	SDI Cost	Maximum TIF-Eligible Reimbursement Amount	Determining Value of Public Benefit / Improvement Cost	Notes
<b>(1) Studies, Surveys, &amp; Development of Plans Implementation &amp; Admin/Professional Svcs (Total Costs)</b>	<b>\$75,000</b>	<b>\$6,360,000</b>	<b>\$6,435,000</b>	<b>\$1,665,000</b>	
Developer's Architectural (incl. Landscaping); Engineering (incl. Geotechnical); Legal; and Financial Consulting Services		\$1,800,000	\$1,800,000	\$450,000	25%/75% Pro Rata Pub v Priv
Developer's Construction Engineer Fees		\$25,000	\$25,000	\$6,250	25%/75% Pro Rata Pub v Priv
Development Impact Fees (City)		\$300,000	\$300,000	\$75,000	25%/75% Pro Rata Pub v Priv
Development Impact Fees (County Trans. Impact Fee)		\$235,000	\$235,000	\$58,750	25%/75% Pro Rata Pub v Priv May be reduced due by County
Developer's Permit Application and Review Fees		\$500,000	\$500,000	\$125,000	25%/75% Pro Rata Pub v Priv
Developer's Overall Management (GC, etc.) Fees		\$3,500,000	\$3,500,000	\$875,000	25%/75% Pro Rata Pub v Priv
City's Engineering Svcs, incl. geotechnical & environmental	\$50,000		\$50,000	\$50,000	100% Public Benefit Assigned
City's Legal Services	\$25,000		\$25,000	\$25,000	100% Public Benefit Assigned
<b>(2) Property Assembly, includes the purchase of real estate and other types of property interests (Total Costs)</b>			<b>TBD</b>		
Frydendall Purchase (est.)	TBD		TBD		
Fisher Purchase (est.)	TBD		TBD		
Neighboring Prop. Access Easement Purchase (est.)	TBD		TBD		
<b>(3) Site Preparation (Total Costs)</b>	<b>\$462,500</b>	<b>\$1,162,500</b>	<b>\$1,625,000</b>	<b>\$1,062,500</b>	
Clearing & Grading Land (incl. soil erosion, drainage, etc.)		\$450,000	\$450,000	\$112,500	25%/75% Pro Rata Pub v Priv
Demolition-Buildings, Structures, Utilities, Etc.	\$300,000		\$300,000	\$75,000	25%/75% Pro Rata Pub v Priv Costs may increase depending on historic preservation objectives
Installation, repair, construction, reconstruction or relocation of <b>public</b> streets and sidewalks within or without the redevelopment project area					
Streetscape Improvements		\$400,000	\$400,000	\$400,000	100% Public Benefit Assigned
Roadway Improvements		\$150,000	\$150,000	\$150,000	100% Public Benefit Assigned
Installation, repair, construction, reconstruction or relocation of <b>public</b> utilities within or without the redevelopment project area * Most costs included as part of Parking Deck Construction					
Relocation/Bury Electric Lines from Louis White School	\$162,500	\$162,500	\$325,000	\$325,000	100% Public Benefit Assigned
<b>(5) Construction of Public Improvements, within the redevelopment project area, incl. but not limited to, buildings, structures, works, utilities, or fixtures</b>	<b>\$0</b>	<b>\$7,200,000</b>	<b>\$7,200,000</b>	<b>\$7,200,000</b>	
Parking Deck		\$7,200,000	\$7,200,000	\$7,200,000	100% Public Benefit Assigned
<b>(6) Environmental (Asbestos and Soil Removal/Remediation)</b>	<b>\$50,000</b>		<b>\$50,000</b>	<b>\$12,500</b>	
Aesbestos and Soil Remediation	\$50,000		\$50,000	\$12,500	25%/75% Pro Rata Pub v Priv
<b>(8) Govt. Financing Costs</b>	<b>\$200,000</b>		<b>\$200,000</b>	<b>\$200,000</b>	
Cost of Issuing Debt	\$200,000		\$200,000	\$200,000	value does not include long-term financing (interest) cost 100% Public Benefit Assigned
<b>(10) Relocation (Total Costs)</b>	<b>TBD</b>				
Insurance Office (likely under acquisition costs)	TBD				
Dental Office (likely under acquisition costs)	TBD				
<b>(13) Developer's Financing Costs</b>		<b>\$1,355,636</b>	<b>\$1,355,636</b>	<b>\$338,909</b>	
Loan & Equity Raise Fees		\$785,636	\$785,636	\$196,409	25%/75% Pro Rata Pub v Priv
Short-Term, Construction @ 100%		\$570,000	\$570,000	\$142,500	25%/75% Pro Rata Pub v Priv
<b>TOTAL KNOWN COSTS (ESTIMATED)</b>	<b>\$787,500</b>	<b>\$16,078,136</b>	<b>\$16,865,636</b>	<b>\$10,478,909</b>	

July 12, 2016  
Batavia, Illinois

**Draft for Review and Comment Only**  
**Not for Execution**  
**Subject to Internal Staff, City Attorney and**  
**Bond Counsel Review**

**REDEVELOPMENT AGREEMENT**

(1 NORTH WASHINGTON AVENUE)

BETWEEN

**1 N. WASHINGTON LLC,**  
AN ILLINOIS LIMITED LIABILITY COMPANY

AND

**CITY OF BATAVIA,**  
AN ILLINOIS MUNICIPAL CORPORATION

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Exhibit A – Legal Description for 1 N. Washington

Exhibit B – Legal Description for 113 E. Wilson

Exhibit C – Legal Description for 121 E. Wilson

Exhibit D – Legal Description for the City parking lot parcels, 20 N. River St., 111 E. Wilson St.  
and 115 E. Wilson St.

Exhibit E – Legal Description for the 12 N. River Street Easement

Exhibit F - Legal Description for the Redevelopment Site (all parcels)

Exhibit G – List of Public Improvements

Exhibit H – Preliminary Plans

Exhibit I – Real Estate Purchase Agreement

Exhibit J – SSA Ordinance Form

Exhibit K – Memorandum of Recording Form

Note: Include alley and all applicable addresses

# 1 NORTH WASHINGTON AVE. REDEVELOPMENT AGREEMENT

**THIS NORTH WASHINGTON AVENUE REDEVELOPMENT AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2016 (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 NORTH WASHINGTON LLC**, an Illinois corporation ("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 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") and the access easement running in favor of the property at 12 N. River St. legally described in the document attached hereto and incorporated herein by reference as **Exhibit E** (the "12 N. River Easement") are presently owned by third parties and shall be 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 F** (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 300 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 300 daytime and overnight public parking spaces as more specifically provided in Section 4.05 (a) and (b).

**(b) Commercial Space.** The commercial space shall be approximately 8,345 square feet built on top of the partially underground parking facility along River Street and approximately 6,300 square feet of built at the second floor level along E. Wilson Street, for a total of 14,645 square feet.

**(2) Residential Space.** The residential space (Residential Space) shall consist of four (4) stories (stories 3, 4, 5 and 6) and consist of approximately 171 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, public utilities, including onsite water, onsite storm sewer, onsite sanitary sewer, offsite and onsite electrical, and offsite public street, sidewalk, right-of-way and streetscape improvements identified more specifically in the document attached hereto and incorporated herein by reference as **Exhibit G** (the "Public Improvements"), but shall not include the costs associated with improvements necessary to construct the Residential Space, which improvements are hereinafter referred to as Private Improvements. The parties agree that proration of some costs shall be necessary. There is no offsite water, sanitary collection or storm sewer system improvement needed as part of this Project, except that Developer's expense includes all associated 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 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.

**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, 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 approximating but not exceeding \$13,000,000 as more fully provided herein below.

**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.

**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 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) Demolition and Environmental and Soils Studies.** Developer acknowledges and affirms that the City has undertaken and completed certain environmental and soils studies of the Redevelopment Site; the Developer is satisfied to proceed based on those completed studies; however, Developer acknowledges that further environmental assessment may need to be undertaken for those portions of the Redevelopment Site underlying the buildings and current parking facilities following demolition, whether demolished together or each at separate times, which additional environmental assessment and clean up (if any) will be the City's responsibility, provided that the total cost of the demolition, environmental assessment and clean up does not exceed \$750,000. In the event such costs are reasonably estimated to be in excess of said amount, the parties shall meet in accord with Section 2.05.

**(b) Zoning & Preliminary Plan.** Within \_\_\_\_\_ ( ) days after the City acquires title to the Fisher and Frydendall properties and provides written notice thereof, Developer shall submit to the City applications for zoning and preliminary plan approvals, including, but not necessarily limited to, site plans, preliminary engineering, preliminary landscape plans and preliminary building elevations "Planned Development Overlay Zoning District Approvals" substantially consistent with the 8-sheet plan set prepared by Nagle Hartray dated June 29, 2015, as updated on June 30, 2016, titled Batavia Preliminary Renderings attached hereto and incorporated herein by reference as **Exhibit H** (the "Preliminary Plans"), previously deemed suitable and appropriate for the

Redevelopment Site, and submit materials required for City approval illustrating connections to City public utilities, the grant easements benefiting City for same, the grant of easements that are necessary for utilities and other purposes.

(c) **Pro Forma.** The Developer has previously submitted on June 22, 2015, as amended, 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.

**1.03. Acquire Redevelopment Site from City.** Subject to the *Contingencies Precedent to Acquisition* identified in Section 3.02(a), and within \_\_\_\_\_ ( ) days after the last of the Section 3.02(a) contingencies are satisfied, or \_\_\_\_\_ ( ) months after the City takes title to all the property in the Redevelopment Site, whichever is later, 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 the form attached hereto as **Exhibit I**.

**1.04. Duties of Developer Prior to Construction of the Project.** Subject to the *Conditions Precedent to Developer Construction* identified in Section 3.02(b), 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) **Secure Construction Financing for the Improvements.** Within \_\_\_\_\_ ( ) days, Developer shall secure a binding construction loan commitment from a lender of its choosing at market interest rates after Developer acquires Redevelopment Site.

(b) **Final Engineering, Construction Plans and Approvals.** Within \_\_\_\_\_ ( ) days of acquisition of the Redevelopment Site, Developer shall submit application, if not already submitted, for approval of all permits, consents, authorizations, necessary for the Project construction and the final site plan approvals and engineering plans, site plan, and such other submittals as are necessary and required for the Project consistent with the Preliminary Plans to the City for review and approval (the "Final Plans").

(c) **Plat of Consolidation.** Within \_\_\_\_\_ ( ) days of acquisition of the Redevelopment Site, Developer shall obtain City approval of connections to City public utilities and grant of easements benefiting City, grant the easements that are necessary for utilities and other purposes to the City and record them and to obtain approval and record a plat of consolidation of the various parcels comprising the Redevelopment Site into one parcel. 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.

(d) **Apply for Building Permit.** Within \_\_\_\_\_ ( ) days of acquiring the Redevelopment Site or ninety (90) days from the City approval of Zoning and the Final Plan, whichever is later, Developer shall obtain all of the documentation necessary to obtain the necessary building and related permit(s).

(e) **Finalize Construction Contracts.** Within \_\_\_\_\_ ( ) days of acquiring the Redevelopment Site or \_\_\_\_\_ ( ) days from the date that the City approves the building permit, whichever is later, Developer shall finalize and issue the contracts for construction of the

Project, and obtain from the project general contractor guaranteed pricing of general project construction components, and provide copies of same to the City Community Development Department.

**(f) Surety for Performance and Payment.** Within \_\_\_\_\_ ( ) days from acquiring the Redevelopment Site, 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 H**. 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.

**(g) Insurance.** 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.

**(h) 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. 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.

**1.05. Construction Duties of Developer.** After the Developer has completed and satisfied all of the *Duties of Developer Prior to Project Construction*, waiver or satisfaction of all *Conditions Precedent to Developer Construction* identified in Section 3.02(b) and issuance of a the building permit and other approvals for construction of the building, the Developer shall:

**(a) Begin Construction of the Project.** Begin construction of the Project within thirty (30) days in accordance with, and subject to: (i) this Agreement, (ii) the applicable local, state and other laws and regulations ("Applicable Laws"), and (iii) the Final Plans and specifications; and

**(b) Completion of the Public Improvements.** 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.

**(c) 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 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 they 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 Subdivision of the Property.** Within sixty (60) days from substantial completion of the Public Parking Facility, as determined by the City Engineering department and rough framing of the building shell, Developer shall submit an application packet to City for a Plat of Subdivision and/or condominium approval covering the Redevelopment Site, to separate out from the balance of the Site, the Public Parking Facility and its appurtenances.

**1.10 Transfer of Title to the Public Parking Facility.** Within thirty (30) days of the subdivision approval and/or condominium completion of the Redevelopment Site and agreement pursuant to Section 1.09 above, and provided satisfactory payment by the City has been made to the Developer, the Developer shall transfer clean 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 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, checking account statements, 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").

## **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.** Within \_\_\_\_\_ (\_\_\_) days from the Effective Date, the City shall acquire title, enter into a contract or an option to acquire title or file suit to exercise eminent domain to acquire title to the Fisher Property and the Frydendall Property and obtain a release or otherwise extinguish the easement rights running in favor of the owner of the property at 12 N. River St. Batavia, IL or any other benefitted properties.

**2.03 New TIF District.** The City has initiated the process of disconnecting the Redevelopment Site from the existing TIF districts and shall work diligently in establishing a new TIF district for the Redevelopment Site and shall establish the new TIF district within \_\_\_\_\_ (\_\_\_) days from acquiring title, entering into a contract or obtaining an option to acquire title or filing suit to exercise eminent domain to acquire title to the Fisher Property and the Frydendall Property and obtaining a release or otherwise extinguishing the easement rights running in favor of the owner of the property at 12 N. River St. Batavia, IL or any other benefitted properties.

**2.04. Demolition of Buildings.** Within \_\_\_\_\_ (\_\_\_) days of acquiring title to and possession of the Site, including the parcels described in Section 2.02, the City shall begin the demolition of all buildings currently found on the Redevelopment Site, including but not necessarily limited to the buildings at 111, 113, 115, 121 and 133 East Wilson Street on the Redevelopment Site, but excluding the parking deck, staircases and retaining walls at 20 North River Street. The City may demolish the structures together at one time or separately at different times.

**2.05 Environmental Testing and Clean Up.** Within \_\_\_\_\_ (\_\_\_) after the demolition of the buildings on the Redevelopment Site, the City shall test the soil under the building and parking areas are to determine the environmental condition of the Site and submit the results in writing to Developer. At this point, and at any point prior to the beginning of construction, if any environmental conditions are discovered that require clean up, 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).

**2.06 Demolition of Existing Parking Facilities.** Within thirty (30) days after the Site is determined to be free of environmental conditions that must be remediated, the City will take action to initiate demolition of the parking lot, parking deck and remaining structures on the Site that must be removed to accommodate the redevelopment of the Site. The costs of demolition of any improvements including but not limited to buildings on the Site shall be known as City Demolition Costs.

**2.07 Approval of Zoning, Subdivision, Preliminary Engineering and Site Plan and other Entitlements.** City shall process the zoning and other development applications diligently, but in any event within ninety (90) days, in keeping with the regular Plan Commission, Historical Preservation Committee, Committee of the Whole and Council meeting schedule, 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.

**2.08. TIF Financing and Bond Issue.** The City hereby acknowledges and agrees that, according to the Developer’s Pro Forma 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, and subject to Project Completion and submittal of the required documentation for reimbursement of eligible costs pursuant to Section 1.11, the City shall issues bonds to provide for reimbursement of the Eligible Projects. City shall issue bonds to be retired as a general obligation of the City in the amount of \$13,000,000 less the City Demolition Costs and City Environmental Clean Up Costs up to \$750,000 (the “Maximum Reimbursement Amount”), for the retirement of the bonds from the tax increment generated by the Redevelopment Site for the following TIF Eligible Improvements not to exceed the Maximum Reimbursement Amount, to wit:

- (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; and
- (k) City-required off-site electric utility infrastructure upgrades and/or extensions, building, utility and other associated fees.

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").

**2.09. Conveyance of the City Property ("Redevelopment Site").** Subject to the granting of the zoning, subdivision, site plan and other entitlements, easements to be retained by the City and satisfaction and/or waiver of all *Contingencies Precedent to Transfer of Title* identified in Section 3.03(a), the City shall 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 G** and the terms of this Agreement.

**2.10. Approval of Engineering Plans and Specifications.** City shall process in a timely fashion, in keeping with its usual and customary practices, the submittal of engineering plans and other technical drawings and submissions for the Project that are complete and in compliance with the City Codes, and other local, state and federal regulations that are applicable and which conform to sound engineering principles. Developer acknowledges that City has represented that a full review of site and engineering plans reasonably takes approximately ninety (90) days from submittal of complete, code-compliant materials.

**2.11. 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.

**2.12. Utility Connections.** City shall authorize (pursuant to approved engineering plans) connection of 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, provided that Developer complies with all City Code requirements and other local, state and federal laws and regulations for such utility connections.

**2.14. Fees.** City shall charge only those zoning, subdivision, building permit, engineering, utility connection, inspection and other fees that are assessed on a uniform basis throughout City and are of general applicability for commercial structures within the City, not to exceed a total amount of \$300,000.

**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 Maximum Reimbursement Amount subject to the provisions of Section 3.03(c) as follows, to wit:

(a) 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 less 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, 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 Maximum Reimbursement Amount, less the retainage, until the conditions in subsection 2.16(b) below are met; and

(b) Within sixty (60) days after the determination of the Redevelopment Project built-out EAV, the City shall reimburse the additional TIF Eligible costs for the entire Project up to the Maximum Reimbursement Amount ("Final Payment"), and make payment to the Developer for reimbursement for remaining TIF Eligible Costs not previously reimbursed in connection with the First Payment up to the Maximum Reimbursement Amount, subject to submittal by the Developer of all Eligible Cost Reimbursement Documentation.

**(c) 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 debt service payments when those payments are due and the City provides the Developer notice of the establishment of the SSA and opportunity to review the SSA Ordinance, which ordinance shall be in substantial conformance with the document attached hereto and incorporated herein by reference as Exhibit J before it is approved and notice of the City's intent to levy the SSA tax before an ordinance approving a levy is approved. 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 true up provisions in Section 5.04. In no event shall City be allowed to establish a special service area that gives City the authority to levy in excess of \_\_\_\_\_ cents per (\$0.\_\_\_\_) per \$100 of assessed valuation annually.

**2.17. Approval of Plat of Subdivision.** City shall process for approval the Plats of Subdivision and/or condominium 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 garage.

**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's obligations to continue through the various stages of development are as follows:

**(a) Pre-Acquisition.** 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:

- i. Title.** The City has acquired all of the property comprising the Redevelopment Site;
- ii. Demolition and Environmental Remediation.** The City has demolished the buildings, tested the property for environmental contamination and completed any remediation that is required for completion of the Project;
- iii. Zoning & Preliminary Plan Approvals.** Developer has secured the zoning and Preliminary Plan approvals for the Project.
- iv. Contract.** All of the terms and provisions of the Purchase Agreement in the form attached hereto as **Exhibit G** have been satisfied.

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

- i. Construction Financing.** Developer has secured construction financing acceptable to Developer for the costs associated with construction of all of the Improvements, including both hard and soft costs associated with same.
- (ii) Final Approvals.** The Final Approvals have been obtained, including all third party approvals, permits, consents, authorizations, engineering, site plan approvals, subdivision approvals, and/or the like, needed by Developer or its lender for the Project Plan, including without limitation all permits for the construction and operation of the Improvement (including without limitation private, City and Illinois).
- (iii) Establishment of New TIF.** The City has provided the Developer with adequate proof of the establishment of the new TIF District covering the Redevelopment Site.
- (iv) Waiver of Bond Contingencies.** The has obtained an opinion regarding the tax exempt status of the Tax Exempt Bonds and the City has successfully completed the issuance of the Tax Exempt Bonds and Second Bonds and/or has waived the Bond Contingencies.

**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. Demolition and Environmental Remediation.** The City has determined that the cost of demolition and any environmental remediation necessary to complete the Project is not economically prohibitive and the Parties are not unable to reach accord on said issue per Section 2.05;

**iii. Tax Exempt Opinion.** The city has obtained an opinion from bond counsel that the Tax Exempt Bonds described in Section 2.10.b.i 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.

**iv. School District Payments.** The City has determined that any payments owed to the School District for children residing in the completed residential structure on the Redevelopment Site will not detrimentally affect the economic feasibility of the Project or prevent the City from being able to make the bond payments when due and retire the bond issues in keeping with the bond repayment schedule.

**(b) 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(c).

**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(b).

**iii. Final Approvals.** The Final Approvals have been obtained.

**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(f).

**v. Insurance.** Proof of insurance meeting the requirements set forth in Section 1.04(g) 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(h).

**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. New TIF Establishment.** The Redevelopment Site has been established by the City as 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

**(c) 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. Final Subdivision & Completion and Conveyance of Public Parking Facility.** The final Plat of Subdivision/Condominium has 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.** All or portions of the documentation substantiating the Eligible Reimbursement Costs has been submitted as required by Section 1.11.

**iii. Compliance with One-Year Maintenance Requirements.** The Developer is in compliance with, even if the Developer has not completed, the one-year maintenance requirements for the Public Improvements as required by Section 1.12(a).

**iv. No Default.** The Developer is not in default of any material provision of this Agreement.

**v. 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.

**vi. Special Service Area.** A special service area encompassing the Redevelopment Site solely as a backup source to fund any gap between the increment generated by the Redevelopment Site and the payments necessary to make the bond payments when due and retire the bond issues in keeping with the bond repayment schedule in place as provided in Section 2.16(c).

**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.** If any of the *Contingencies Precedent to Acquisition* have not been met within in 365 days from the Effective Date of this Agreement and the City is unable to eliminate the *Contingencies Precedent to Acquisition* identified in Section 3.02(a), at Developer's option, the Agreement shall be considered thereafter null and void and of no further force and effect.

**ii. By City.** If any of the *Contingencies Precedent to Transfer of Title* have not been met.

**(b) Termination by City prior to Demolition.** The City may terminate the Agreement if the *Contingency Precedent to Demolition* identified in Section 3.03(a) has not been met, subject to the City's obligation to reimburse the Developer for all costs incurred.

**(c) Termination by City Prior to Transfer of Title.** The City may terminate the Agreement if any of *Conditions Precedent to Transfer of Title* identified in Section 3.03(b) are not met to the City's satisfaction, subject to the City's obligation to reimburse the Developer for all costs incurred.

**(d) Termination by City Prior to Construction.** The City may terminate the Agreement prior to beginning construction if the Developer has not completed and satisfied all of the *Duties of Developer Prior to Project Construction* identified in Section 1.05 and satisfied all *Conditions Precedent to Developer Construction* identified in Section 3.02(b) or any of the *Conditions Precedent to Construction* identified in Section 3.03(c) have not been met, in which case the property shall be transferred back from the Developer to the City, subject to the City's obligation to reimburse the Developer for its costs incurred in the preparation of the plans and submittals to be presented with the zoning and other applications to the City through the date of the notice to terminate.

**(e) Termination by Developer Prior to Construction.** The Developer may terminate the Agreement prior to commencement of construction if the *Conditions Precedent to Developer Construction* identified in Section 3.02(b) are not satisfied within the time frames identified by the City's duties outlined in Section 2.10 and 2.11, provided that the Developer has diligently performed its duties and any delays are not caused by Developer's actions or inactions, subject to the City's obligation to reimburse the Developer for all costs incurred.

**(f) 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, 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 5.06.

**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 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 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.** 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 access of what might be required to be paid to other third parties:

(i) 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) 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.

**4.04 Joint Covenants.** The parties hereby undertake and agree to the following:

**(a) Daytime Public Parking.** All of the public parking spaces shall be available for parking for the general public during daytime business 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”). Subject to Paragraph (b) below. The City shall have the absolute right to impose charges for daytime parking, but agrees not to do so for the two (2) years immediately following issuance of the Occupancy Permit for the Parking facility. Notwithstanding anything to the contrary contained in this Agreement, vehicles parking that properly display required overnight parking permit stickers may park during the day at no cost; and

**(b) Overnight Public Parking.** 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 DMU District, including residents of the Multi-Story, Mixed Use building (hereinafter “East Side Downtown Residents” or “ESDR”), and b) who do not have off-street parking at their own residences. Permits for such overnight parking shall be available to East Side Downtown Residents for a monthly fee initially fixed at thirty dollars (\$30) with minimum annual increases of no more than five percent (5%) or the CPI, whichever is less in keeping with the City Code provisions on ESDR overnight parking. Said permits shall 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, providing 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 ESDR 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”)

## **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 True Up.** After the Project is completed and the EAV for the improved Redevelopment Site is determined, the parties shall review the improved EAV over the life of the TIF District based on a tax increment increase factor of [redacted] and determine the projected schedule for retiring the bonds, a minimum continuing EAV (based on the improved EAV projected at the tax increment factor – 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 any excess shall be applied to reduce bonds on an accelerated schedule.

**(a) Determination of SSA Activation and Tax.** From this calculation, the City shall determine whether and when to activate the Special Service Area tax and to establish 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.

**(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.

**5.05 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 and in sufficient amount to replace the building if destroyed or to make the remaining bond payments and pay off the bonds as provided in Section 4.03(b) after the Project is completed until the City’s bond obligation is retired..

**5.06 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 according to the approved Plan if material alterations are made without the prior written approval of the City, 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 by October 1, 2019 or 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.

**(d) 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 5.06(d) 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; 4) terminate the Agreement 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 5.05. 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.

**(e) 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 LLC  
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](mailto:kate@hmcpc.com)

To City:

Laura Newman  
City of Batavia  
100 North Island Avenue  
Batavia, IL 60510  
email: [cityadministrator@cityofbatavia.net](mailto:cityadministrator@cityofbatavia.net)

With a copy to:

City Clerk  
City of Batavia  
Batavia, IL 60510  
email: [cityclerk@cityofbatavia.net](mailto: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 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.

**8.03 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.

**8.04 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.

**8.05 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.

**8.06 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 estimated and stated in the Pro Forma

**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 parking deck or any rights or obligations relating thereto without Developer's prior written approval.

**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, 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 LLC., AN ILLINOIS LIMITED LIABILITY CORPORATION**

A \_\_\_\_\_

**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.**



**EXHIBIT B**

**Fisher Property Legal Description  
113 E. Wilson St. Batavia, IL**

**CONFIRM WITH CITY ALL APPLICABLE LEGAL DESCRIPTIONS**

**Exhibit C**  
**Frydendall Property Legal Description**  
**121 E. Wilson St. Batavia, IL**

**EXHIBIT D**  
**City Property Legal Description**



**EXHIBIT E**  
**Redevelopment Site Legal Description**



**EXHIBIT F**  
**Preliminary Plans**



## EXHIBIT G

### 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").

#### RECITALS:

- 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 and the Frydendall Property identified in the 1 North Washington St. Redevelopment Agreement entered into contemporaneously between the parties to this Purchase and Sale Agreement (the "Redevelopment Agreement") and gives notice to the Developer (the "**First Notice**"), (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, as of the date that the City of Batavia gives written notice that these *Conditions Precedent to the Effective Date* are satisfied and the Seller is ready to proceed (the "**Second Notice**") (hereinafter the "**Effective 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 First Notice (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<sup>th</sup>) 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 indemnification provision set forth in this 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 zoning and preliminary plan approvals within sixty (60) days after the Seller provides the First Notice 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<sup>th</sup>) 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 the end of the close of the Zoning & Approval Period or from the Second Notice, whichever is later, 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, secure: (i) a current (dated subsequent to the First Notice) 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 obtain all of same no later than thirty (30) days after the First Notice. 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<sup>th</sup>) 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<sup>th</sup>) Business Day following expiration of the Initial Due Diligence Period, and (ii) the expiration of the tenth (10<sup>th</sup>) 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 (dated subsequent to the Second Notice) ALTA/ACSM survey of the Real Property (the "Survey"). 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<sup>th</sup>) 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<sup>th</sup>) 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 prorated. 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. Other Documents.** 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, 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 nondefaulting 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 nondefaulting 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, the cost of the Survey, its 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 LLC  
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](mailto:kate@hmcpc.com)

To City:

Laura Newman  
City of Batavia  
100 North Island Avenue  
Batavia, IL 60510  
email: [cityadministrator@cityofbatavia.net](mailto:cityadministrator@cityofbatavia.net)

With a copy to:

City Clerk  
City of Batavia

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 H**  
**Letter of Credit Form**



**EXHIBIT I**

**Memorandum of Recording**