

# EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the City of Henderson Redevelopment Agency, a public body, corporate and politic (“City of Henderson”), on the one hand, and the City of Naperville (“City of Naperville”) and Water Street Property Owner, LLC, a Delaware limited liability company (“WSPO”), on the other hand. City of Henderson, City of Naperville, and WSPO, (each a “Party” and collectively, “Parties”) agree to the terms outlined herein as of the date on which the Agreement is fully executed by the Parties (“Effective Date”).

## RECITALS

A. City of Henderson has obtained certain trademark rights in WATER STREET DISTRICT for certain goods and services, as documented in its federal trademark registrations with the United States Patent and Trademark Office (*see e.g.*, Reg. Nos. 4716332, 4716331, 4716310, 4716308, 4716312, and 4716329) (the “WATER STREET DISTRICT Mark”).

B. City of Naperville and WSPO have used WATER STREET DISTRICT in connection with the economic redevelopment and geographic revitalization of a site in the Water Street area of Naperville, Illinois (the “Project”).

C. On or about February 14, 2017, counsel for City of Henderson contacted City of Naperville and WSPO objecting to their use of the WATER STREET DISTRICT Mark in connection with the Project, which City of Henderson asserted, and continues to assert, is likely to cause confusion as to source and affiliation among consumers (the “Dispute”).

D. The City of Naperville and WSPO do not agree that their use of Water Street District violated any law, including but not limited to any trademark rights which the City of Henderson has in the WATER STREET DISTRICT Mark. However, the Parties have reached a compromise and settlement of the Dispute and all known claims and causes of action related thereto, and wish to memorialize their communications by entering into this Agreement, doing so freely and voluntarily, after having received the benefit of independent counsel and with full knowledge of its binding and conclusive nature.

In consideration of the mutual covenants of the Parties and other valuable consideration, the sufficiency and receipt of which both Parties acknowledge, the Parties agree as follows:

## TERMS

1. PURPOSE. This Agreement is made between the Parties for the settlement of their claims, obligations and losses with respect to, arising out of, or in any way relating to the events which gave rise to the Dispute.

2. ACKNOWLEDGEMENT OF RIGHTS. The City of Naperville and WSPO acknowledge that City of Henderson now owns certain trademark rights in the WATER STREET DISTRICT Mark and that City of Henderson’s WATER STREET DISTRICT Mark is a valid trademark. The City of Naperville and WSPO agree not to object to, oppose, seek to

cancel or otherwise interfere with City of Henderson's use or registration of the WATER STREET DISTRICT Mark now or at any time in the future, so long as City of Henderson is not in breach of this Agreement.

3. LIMITATION OF USE. In consideration for the release of claims set forth in Section 6 of this Agreement, City of Naperville and WSPO agree that they shall not, now or at any time in the future, use WATER STREET DISTRICT in connection with any of the following goods or services for which they are responsible:

- a) Hats, pullovers, shirts, sweat shirts, t-shirts, visors;
- b) Beverageware, cups and mugs;
- c) Beach bags, tote bags;
- d) City directories and maps published by the City of Naperville;
- e) City newsletters, Metal key chains; and,
- f) Promoting economic development in the downtown area of Henderson, Nevada, promoting public awareness of shopping locally.

The City of Naperville and WSPO further agree that they shall not, now or at any time in the future, seek to register WATER STREET DISTRICT with the United States Patent and Trademark Office and/or any applicable state or local governments.

4. PERMITTED USES. Notwithstanding the foregoing, the Parties agree that City of Naperville and WSPO shall be permitted to engage in non-trademark uses including but not limited to: (a) "Water Street" when referencing the geographic location of the Project, and (b) "Water Street District" when referencing existing and current Naperville city ordinances and/or agreements that reference, govern and/or relate to the Project. Further, either may use "Water Street" without restriction at any time, except in conjunction with "District."

5. DECLARATION OF COMPLIANCE. The City of Naperville and WSPO shall execute a declaration confirming their compliance with Sections 3 and 4 of this Agreement in the form as provided in **Exhibit A**, copies of which City of Naperville and WSPO shall provide to City of Henderson's counsel via email at lwilliams@bhfs.com within ninety (90) days of the execution of this Agreement by all parties.

6. MUTUAL RELEASE. City of Henderson releases and discharges City of Naperville and WSPO, and City of Naperville and WSPO release and discharge City of Henderson, along with each Party's respective officers, directors, shareholders, members, managers, agents, servants, employees, attorneys, insurance companies, representatives and affiliates, and those persons in active concert or participation with any of the foregoing persons, together with their successors and assigns, from any and all claims, liabilities, demands, attorneys' fees, costs, obligations and losses whatsoever, whether now known or unknown, fixed or contingent arising out of or relating in any way to the Dispute. This Section 6 is expressly

contingent upon fulfillment of the obligations in Sections 2, 3, 4 and 5 of this Agreement. The Parties have not, by this Agreement, waived their right to pursue any claims (of any nature) against one another that accrue after the Effective Date of this Agreement and which are not expressly addressed in this Agreement.

7. REMEDIES. City of Naperville and WSPO acknowledge and agree that City of Henderson's rights in the WATER STREET DISTRICT Mark are valuable and unique and that money damages would not be a sufficient remedy for any material breach of this Agreement by City of Naperville and/or WSPO. Accordingly, City of Naperville and WSPO agree that in the event either of them materially breaches this Agreement, including but not limited to failure to fulfill its obligations under Sections 2, 3, 4 and 5 of this Agreement, City of Henderson shall be entitled to injunctive relief and such other relief as any court with proper jurisdiction over the matter may deem just and proper against the breaching Party except for consequential or punitive damages.

8. WAIVER. No waiver by a Party of any default shall be deemed a waiver of prior or subsequent default of the same or other provisions of this Agreement, and any Party may at any time demand strict and complete performance of the Agreement.

9. NEGOTIATED AGREEMENT. Each Party has had full opportunity to review and consider the contents of this Agreement. All of the terms contained in this Agreement, including the Recitals concerning the intentions of the Parties and the purpose of this Agreement, are material terms. In the event that a dispute arises with respect to this Agreement, no Party shall assert that the other Party is the drafter of this Agreement for purposes of resolving ambiguities which may be contained in the Agreement.

10. SEVERABILITY. If any provision of this Agreement is held to be inconsistent with any present or future law, ruling, rule or regulation of any court, governmental or regulatory authority of competent jurisdiction, such provision shall be modified to the minimum extent necessary to effect compliance, and the remainder of this Agreement shall not be affected. If any provision is determined to be illegal, unenforceable or void, then such provision shall be severed from this Agreement and the remainder of this Agreement shall be enforceable.

11. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, predecessors, parents, subsidiaries, affiliates, or other related entities howsoever organized, and upon all shareholders, officers, directors, employees, heirs, executors and administrators of the Parties.

12. INTEGRATION. This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may conflict with this Agreement.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together will constitute one instrument.

14. ACKNOWLEDGEMENT. Each Party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms, that it has had the advice of counsel with respect to this Agreement, that it has the capacity and right to enter into this Agreement, and that it accepts the duties, obligations, privileges and rights granted hereunder.

15. AUTHORITY TO EXECUTE. The undersigned warrant and represent that they are authorized to execute this Agreement.

*[SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, the City of Henderson, by and through its authorized agents, enter into this Agreement.

**CITY OF HENDERSON REDEVELOPMENT AGENCY**

By: *Gloria Tause*  
For Richard Derrick  
Executive Director

ATTEST:

Approved as to Form:

By: *Sabrina Mercadante*  
Sabrina Mercadante, CMC  
Agency Secretary

By: *Nicholas G. Vaskov*  
Nicholas G. Vaskov  
Agency General Counsel

JLT  
CAO  
Review



**IN WITNESS WHEREOF**, the City of Naperville and WSPO, by and through their authorized agents, enter into this Agreement.

**CITY OF NAPERVILLE**

\_\_\_\_\_

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

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

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

By: \_\_\_\_\_  
Name: Nicholas M. Ryan  
Title: Manager

Date: \_\_\_\_\_

**EXHIBIT A**



**DECLARATION OF COMPLIANCE**

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the United States that the facts contained herein are based on my personal knowledge and are true and correct, and if called upon, I could and would competently testify to them:

1. I am the \_\_\_\_\_ of City of Naperville, and have authority to sign this Declaration on behalf of the City of Naperville.

2. I confirm that City of Naperville has fulfilled its obligations under that certain Settlement Agreement, dated as of \_\_\_\_\_, 2018, between it and WSPO, on the one hand, and the City of Henderson Redevelopment Agency, on the other hand.

3. Without limiting the generality of the foregoing, City of Naperville and WSPO have complied with Sections 3 and 4 of the Settlement Agreement concerning City of Naperville and WSPO's promises as defined in the Settlement Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**DECLARATION OF COMPLIANCE**

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the United States that the facts contained herein are based on my personal knowledge and are true and correct, and if called upon, I could and would competently testify to them:

1. I am an authorized agent of WSPO, and have authority to sign this Declaration on behalf of WSPO.

2. I confirm that WSPO has fulfilled its obligations under that certain Settlement Agreement, dated as of \_\_\_\_\_, 2018, between it and the City of Naperville, on the one hand, and the City of Henderson Redevelopment Agency, on the other hand.

3. Without limiting the generality of the foregoing, City of Naperville and WSPO have complied with Sections 3 and 4 of the Settlement Agreement concerning City of Naperville and WSPO's promises as defined in the Settlement Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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

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

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

By: \_\_\_\_\_  
Name: Nicholas M. Ryan  
Title: Manager