

QA March 21, 2018

Thursday, March 15, 2018 9:06 AM

I. CONSENT AGENDA:

1. **18-210** Approve 02/02/2018 thru 02/28/2018 Cash Disbursement for \$18,809,464.80

Q:	Please provide graph with breakdown by Department budget and expense	Gustin, Patty
A:	Staff will provide this graph via email tomorrow morning.	Mayer, Rachel

2. **18-226** Approve the regular City Council meeting minutes of March 6, March 6, 2018
3. **18-229** Approve the Special Events Cultural Amenities (SECA) Workshop minutes from February 26, 2018
4. **18-122** Approve the award of Bid 18-022, Motor Fuel Tank Wagon, to Heritage FS, Inc. for an amount not to exceed \$599,053.80 and for a three-year term.
5. **18-140** Approve the award of Bid 18-013, Tree Planting Services to the Fields on Caton Farm, Inc. for an amount not to exceed \$444,250 and for a one-year term

Q:	Is the developer responsible for the trees in the arterial as well as within the subdivision, or just in the subdivision?	Hinterlong, Paul
A:	Yes per City ordinance, the developer is responsible for all the trees adjacent to their property as well as within their development.	Dublinski, Dick

6. **18-155** Approve the award of Bid 18-026, Tree Removal and Stump Grinding to D Ryan Tree & Landscaping Service for an amount not to exceed \$120,960 and to Steve Piper and Sons for an amount not to exceed \$65,000 for a total award of \$185,960 and for a seven-month term

Q:	How many tree crews do we have working on trees?	Hinterlong, Paul
A:	There are 10 members, divided into three crews, of the Forestry Division within Public Works. They are responsible for annual tree removals, stump grinding, and tree trimming. This contract is used to supplement the work of the Forestry	Dublinski, Dick

Division. The annual workload is approximately, 1000 tree removals and stump grinding, and 7500 trees trimmed.

- 7. **18-162** Waive the applicable provisions of the Naperville Procurement Code and award Procurement 18-082, Emergency Mass Notification System, to Everbridge for an amount not to exceed \$92,610 and for a three-year term. (Requires six positive votes)

Q:	Item I. 7 (18-162) Approve Contract to Everbridge If we follow the rationale that we must award this contract because implementation of a new notification system could derail the recent successes in subscribers to Naper Notify, does that mean that the city is forever wed to Everbridge? Are there other providers that could be able to convert the contact base to a new system?	Boyd-Obarski, Rebecca
A:	No, the City is not forever wed to Everbridge. Staff understands that technology changes and the City should not be restricted to a good or service because we have a prior relationship. This award does not mean that City staff will not look for other opportunities. The customer data in the system is the property of the City and can be extracted and moved to another platform. However, at this time, staff believes that changing software is not in the City's best interest given all the other migrations currently underway. From a cost-benefit analysis the Everbridge software is performing at a high level and they provide exceptional customer service, and an additional training portal at no cost and have not increased the cost of the software. Communications and IT will continue to look at emerging platforms moving forward.	LaCloche, Linda/Schmidt, Kim

- 8. **18-190** Approve the award of Sole Source Procurement 18-083, IT Research and Advisory Services, to Gartner, Inc for an amount not to exceed \$363,000 and for a three-year term.

Q:	Item I. 8 (18-190) Gartner IT Research and Advisory Services. How does the City "spend" on this Contract? By hour, by project request, or is it a flat fee?	Boyd-Obarski, Rebecca
A:	The Gartner contract is a flat fee, with annual payments. It is the responsibility of the IT Director to ensure IT and City Staff maximize the value of this contract.	Anderson (IT)
Q:	Please explain why we are not putting this out for bid so we can potentially get a lower price? Concerned about the physical/medical safety of 5G and its associated hardware. Will they be able to provide data and documentation to ensure we are not putting the health of our residents at risk?	White, Benjamin
A:	In the technical advisory space, Gartner is a clear leader. From their online training, to regional user groups, to symposiums, Gartner differentiates itself from other firms that offer mostly a set of online libraries. The City has, and will continue to receive advice from Gartner on the proper uses and location of 5G devices. The City will also continue to	Anderson (IT)

work with cellular carriers on placement and colocation as well as state government to pass effective, common sense legislation concerning 5G that allows the City to properly manage these items in the public right of way.

- 9. **18-211** Approve the award of Cooperative Procurement 18-092, 2019 Peterbilt Model 348 Grapple Truck, to J X Enterprises, Inc., for an amount not to exceed \$216,510
- 10. **18-225** Approve the City Council meeting schedule for April, May and June 2018
- 11. **18-159B** Approve implementation of an on-street bike route on Lisson Road, Wehrli Road, and Ranchview Drive
- 12. **18-173** Pass the ordinance to establish a temporary street closure for the 2018 Soap Box Derby Races and issue a Special Event Permit
- 13. **18-163B** Waive the first reading and pass the ordinance to establish a two-way stop at the intersection of Corktree Road and Sassafras Lane and a four-way stop at the intersection of Winterberry Avenue and Honey Locust Drive (requires six positive votes)
- 14. **18-223** Pass the ordinance reserving the City's 2018 Volume Cap
- 15. **18-228** Conduct the first reading of an ordinance repealing and replacing Sections 6-13, 9-1A, 9-1B, 9-1C, 9-1E-7, 9-1F-1, 9-1F-23 of Naperville Municipal Code pertaining to telecommunications facilities on both private and public properties and in the right-of-way.

Q:	<p>1. I. 15 (18-228) Proposed amendments to Naperville Code re: telecommunications facilities</p> <ul style="list-style-type: none"> a. Will we receive the Magellan Report before we are asked to adopt these changes? b. In addition to the summary of key amendments, could you give us a briefing on what is different under these amendments vs. the current code? E.g., are these new provisions to deal with new "facilities and components" or are these regulations on the placement and use of the facilities substantially different? 	Boyd-Obarski, Rebecca
A:	<p>1.a: Council will receive a copy of the Magellan report via the Confidential on 3/23. Staff will offer 2x2 discussion sessions for Council prior to the 4/3 meeting.</p>	Anderson (IT)
	<p>1.b: The changes proposed to Title 6 and Title 9 are not substantially different than the existing regulations. They do not substantially change regulations in terms of the placement or use of telecommunication facilities. The proposed updates are primarily technical and clean-up changes aimed at improving the clarity and enforceability of the regulations based on a combination of recommendations from the City's consultant, Magellan, the Illinois Municipal Code's Model Telecommunication Ordinance, and best</p>	Dick, Trevor and DiSanto, Mike

practices that have been developed by the City and other cities that have been progressive regarding telecommunication issues.

Because the proposed ordinances contain a significant number of changes staff is more than happy to meet with Council members before the Council meeting to walk through the specific changes. Or if Council prefers, staff can provide versions of the proposed ordinances with significant changes highlighted.

- 16. **18-099B** Table the decision on whether to financially participate in funding a replacement fence along the north side of 95th Street to the May 1, 2018 City Council meeting

L. ORDINANCES AND RESOLUTIONS:

- 1. **18-209** Pass the ordinance to abate a portion of the 2017 tax levy for the City of Naperville authorizing an abatement of \$1.8 million from the revised tax levy of \$48,686,811 for a net total tax levy of \$46,886,811
- 2. **18-222** Pass the ordinance to Abate a Portion of the 2017 Tax Levy for Special Service Area No. 23 (Naper Main)
- 3. **18-231** Pass the ordinance amending Chapter 3, Title 3, Section 11 (Liquor License and Permit Classifications) of the Naperville Municipal Code eliminating the sunset provision contained within the outdoor seating permit and increasing the required sidewalk clearance for liquor licensed establishments from five to eight feet.

Q:	Please share any input received from DAC, NAHC, and 360 Youth Services with respect to the proposed ordinance.	CMO
A:	<p>DAC held a special meeting on March 19, 2018 to discuss the proposed ordinance. Attached is a summary of their votes, as well as the draft meeting minutes.</p> <p>Harley Jones, on behalf of 360 Youth Services, provided the following response:</p> <p>"As always 360 Youth Services appreciates the opportunity to support city leadership as they consider important decisions. In June of 2017, 360 Youth Services' prevention staff prepared research for members while making those initial decisions. At the time, there was no prevention research that directly targeted the issue being considered by the Council and that continues to be the case. We have no additional information to add at this time."</p> <p>NAHC has not provided a response at this time.</p>	

Q:	<p>1. L. 3 (18-231) Liquor license for Outdoor Seating on public sidewalks in downtown</p> <p>a. Has there been any consideration given to uniform/standard seating (e.g., the benches or new single unit small tables with attached chairs) for the downtown sidewalks so that we could control the placement and assure a clear walking path?</p>	Boyd-Obarski, Rebecca
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	<p>b. Please clarify again, do non-liquor establishments need to obtain a permit for outdoor seating?</p> <p>c. What does the zoning code for the downtown core say about outdoor seating?</p>	
<p>A</p>	<p>a. Has there been any consideration given to uniform/standard seating (e.g., the benches or new single unit small tables with attached chairs) for the downtown sidewalks so that we could control the placement and assure a clear walking path?</p> <p>The pending Downtown Streetscape Design Standards recommend a high quality streetscape furniture palette that includes trash receptacles, bollards, benches, and bike racks with a black wrought iron appearance. As the new streetscape standard is installed within the downtown, this furniture will be placed in the amenities area and will likely limit the need for individual businesses to install additional tables/chairs for their (non-liquor) use. For establishments receiving a liquor permit, staff and the Liquor Commissioner will review the proposed seating and fencing plan; as the seating area will be enclosed with a fence, it will be unlikely for those tables/chairs to encroach upon the established clear walking path following installation.</p> <p>b. Please clarify again, do non-liquor establishments need to obtain a permit for outdoor seating?</p> <p>Establishments that provide outdoor seating on the public way, without liquor service, must obtain an outdoor seating permit. An annual non-liquor outdoor seating permit costs \$100. Application for said permit is made to the Clerk's Office. The Clerk's Office notifies T.E.D. of the application and an inspection is completed. If the proposed seating meets City standards the Clerk's Office issues the permit. If the outdoor seating permit application involves the service of liquor, the permit is referred to the Liquor Commissioner for approval once it passes T.E.D.'s inspection.</p> <p>c. What does the zoning code for the downtown core say about outdoor seating?</p> <p>The zoning code does not provide any regulations for public property. With respect to private property, there are two references to outdoor seating provided in the B4 district, as follows:</p> <p>6-7D-4-3: - REQUIRED CONDITIONS: All business, servicing, or processing, except for off street parking or loading, shall be conducted within completely enclosed buildings. The normal services and sales offered at eating and drinking establishments are excluded from this provision. The City Council may waive this provision by designating certain days on which business establishments may conduct their businesses outside the building or structure. Provided, however, that the sale and storage of outdoor seasonal merchandise at retail shall be permitted in accordance with the provisions of Section 6-2-23 of this Title.</p> <p>Section 6-7D-7: YARD REQUIREMENTS: For any new construction or modifications to any exterior building wall made after January 1, 2012, the setback shall be no greater than six (6) feet from any property line. If permanent outdoor seating is proposed after January 1, 2012, the setback shall be measured from the limit of the defined outdoor dining area.</p>	
<p>Q:</p>	<p>Please provide a copy of the lease agreement with Quiubo. The</p>	<p>Hinterlong,</p>

	one prior to the liquor license for outdoor seating.	Paul
A:	<p>On August 16, 2016, the City Council approved a lease of the City right-of-way to Water Street Property Owner, LLC for the purpose of allowing outdoor seating for Quiubo. The term of the lease was just over five (5) years and may automatically extend thereafter. The annual lease rate is \$1,397.50 which was based on the fair market value of the property per square foot.</p> <p>After the lease was negotiated, the City enacted an outdoor seating permit that allowed for the service of alcohol on public property. Quiubo opted for the outdoor seating permit and the lease was never signed.</p> <p>Attached is a copy of the lease that was approved by Council.</p>	DiSanto, Mike
Q:	<p>I am concerned with wheel chairs/strollers passing each other when there is only 5-6 ft clearance. My initial thought would simply let one pass by while the other person waits. However, this may not occur if both of the two passing parties don't see each other until they are already in the pathway and have no option to get out of each other's way.</p> <p>Question: What is the longest stretch of walk way in which this incident could occur? Could we put up signs or have measures in place to mitigate this from happening? How do we handle this with other sidewalk areas?</p>	White, Benjamin
A:	<p>The ADA Standards for Accessible Design set the minimum standards required to make the built environment accessible. The minimum clear width required for a route to be considered accessible is 36 inches. ADA further requires that if the route is less than 60 inches, passing areas must be provided every 200 feet. Based on these guidelines, designated passing spaces are not required when the sidewalk is 5 feet wide or greater.</p>	DiSanto, Mike



Meeting Minutes

Downtown Advisory Commission

Monday, March 19, 2018

3:30 PM

NEU Conference Room

A. CALL TO ORDER:

Chairman Rubin called the meeting to order at 3:33 p.m.

B. ROLL CALL:

Present: Gustin, White (left at 5:00 p.m.), Rubin, Hitchcock (left at 4:40 p.m.), Frank, Costello (left at 5:15 p.m.), Zangler, Jeffries, Nagle, Miers

Absent: Andersen, Schatz

Also Present: Laff, Louden, DiSanto, Trotz

Marilyn Schweitzer, Naperville Resident

Gary Smith & Chris Murphy, Accessible Community Task Force

Barb Stark, Advisory Commission on Disabilities

Michael Hagen, Advisory Commission on Disabilities

Stacy Short & Lynn Reissenweber, RPAI/Main Street Promenade

Tom Stark, Naperville Resident

C. PUBLIC FORUM:

None

D. OLD BUSINESS:

1. Provide feedback on a proposed amendment to Chapter 3, Title 3, Section 11 (Liquor License and Permit Classifications) of the Naperville Municipal Code related to outdoor seating permits.

Mike DiSanto, City Attorney, provided an overview of the proposed ordinance amendment pertaining to liquor establishments on public property. The current ordinance has been in place for approximately 1 year, but has a sunset. Staff prepared a code amendment to extend or eliminate the sunset clause and permit the ordinance to remain in place. City Council has requested DAC's feedback on the issue.

Rubin indicated that he will participate in the discussions but abstain from a vote due to property that he owns within the downtown. Rubin raised the following questions for DAC consideration: Should distinct and functional barriers be consistent amongst all outdoor seating areas? Should noise restrictions be more enforceable or at least easier to address as they are occurring? Confirmed that people must be seated within area to be served. Is the \$500

permit fee too low?

Jeffries believes that the fee is appropriate given the limited number of additional tables that could be added to this area. Frank noted that it may be appropriate for an establishment like Craftsman to pay a higher permit fee since they converted a public improvement for private use; staff later clarified that the Craftsman largely paid for the improvements that were installed in front of their building with a small amount of City participation. Frank is not necessarily opposed to liquor being served outside but wants to make sure that there are still adequate public gathering places as recommended by the streetscape plan.

Gustin - are we comfortable with some of the streetscape areas being made private?

DAC had general discussion regarding existing sections of streetscape, existing outdoor seating areas, and unobstructed walking widths throughout the downtown. Nagle indicated that 6' clear still feels tight; 8' wide would be preferable. Costello indicated concern with a reduced sidewalk clearance if it inhibits comfort for walkers/shoppers within the downtown between 9 a.m. to 5 p.m.

Jeffries - if Front Street Cantina has an outdoor seating permit but not a liquor license, could they restrict who sits at those tables? DiSanto - yes, they could. Jeffries - would Front Street still be able to put their tables adjacent to their building? TED would review the outdoor seating permit, once submitted; TED would direct them to move the seating area to the amenity zone.

Hitchcock - recommends 6' clear width to remain unobstructed by any use (sandwich boards, tables, chairs, etc.); 9' clear height (consistent with awning height clearance requirements).

Rubin - should clear width be increased if area is fenced given that there is less maneuverability?

Marilyn Schweitzer - expressed concerns with the accessibility of downtown. Believes that 3.5' is the absolute minimum ADA width but 5' is far more common. Without a barrier, tables and chairs have the potential to creep into the walking area. Believes that the Downtown Streetscape Standards that are recommended are good, but that the 5' recommended clearance is not consistent with the recommended standards. The current proposals should match the future streetscape improvements.

Jeffries - how many non-liquor establishments would be impacted if the sidewalk clearance width is increased? Laff indicated that many would likely be prohibited from placing tables/chairs out if the required width was 8'.

Miers - how many complaints have been received from the first year of this liquor permit? DiSanto indicated that no formal complaints have been received and no speakers appeared at the Liquor Commission meeting when this item was discussed; however, some residents, such as Ms. Schweitzer, have expressed concerns.

Gary Smith, Chairman of the Accessible Community Task Force - their position is that anything less than 8' is unacceptable - it is not enough space - Naperville needs to be accessible and inclusive.

Nagle made a motion to require 8' clearance regardless of liquor/non-liquor service; Frank - seconded the motion. Hitchcock indicated that he can support the 8' minimum but would like to give staff the ability to be flexible on that requirement down to 6' (i.e., minimum is 6', preference is 8'). Jeffries indicated that she cannot support that requirement as many existing benches, trees, light poles would already violate this requirement. Louden clarified the ADA requirements.

Louden noted that the majority of the downtown streets will fall within the "narrow" category with a minimum 6' sidewalk width being achievable.

Stacy Short - leasing director of Main Street Promenade (RPAI). Their sidewalk width is 14'. Some of their spaces are difficult to lease due to their location and lack of visibility (i.e., northeast corner of Main & Benton). If the minimum width of 8' is enforced, they will not be able to have a seating area and this will impact their ability to lease the space for restaurant use.

Schweitzer - there is a difference between public amenities in the right-of-way and private useage of this same space.

Frank noted that we have to work with the existing conditions present in the downtown. While 12' would be great, we could not achieve this with existing conditions. Gustin noted that the streetscape report did not account for the possible fencing off of areas within the amenity zone - does this need further consideration?

Michael Hagen & Chris Murphy (ACD/ACTF) indicated that they are comfortable with 6' minimum, 8' where possible.

Rubin - recommends that the fencing be quality, attractive, and be complimentary/consistent with the Downtown; DAC agrees. DiSanto noted that the Mayor, as Liquor Commissioner, reviews each liquor permit and has the ability to require changes, as needed.

Rubin - ordinance needs to reflect a requirement that private seating areas (seats, tables, fences) be removed in the off-season. Costello would like there to be a defined period for outdoor usage. Miers recommended that seating be permitted between April 1 - November 1st; outside of those dates, all equipment that is not permanently affixed must be removed and stored off-site.

Nagle - motion to require 8' clearance regardless of liquor/non-liquor service; require any requests less than 8' wide to be processed as a variance. Frank - seconded the motion.

Jeffries made a motion in substitution to require a 6' minimum, with 8' or wider if possible. Second - Miers.

Ayes: 5 - Zangler, Costello, Frank, Jeffries, Miers
Nays: 1- Nagle
Abstained: 2- Rubin, Gustin

Motion in substitution is approved.

Miers made a motion to permit outdoor seating between April 1 - November 1st; outside of those dates, all equipment that is not permanently affixed must be removed and stored off-site. Seconded by Zangler.

Ayes: 7- Zangler, Nagle, Gustin, Costello, Frank, Jeffries, Miers
Nays: 0
Abstained: 1 - Rubin

Miers made a motion to require the fencing installed for liquor establishments be consistent with either the Downtown Design Guidelines or the Downtown Streetscape Standards. Seconded by Frank.

Ayes: 5 - Zangler, Nagle, Gustin, Frank, Jeffries, Miers
Nays: 0
Abstained: 1 - Rubin

E. REPORTS:

1. Approve the February 12, 2018 DAC meeting minutes.

Jeffries made a motion to approve the February 12, 2018 DAC meeting minutes. Seconded by Frank. Motion unanimously approved.

F. NEW BUSINESS:

G. ADJOURNMENT:

**CITY OF NAPERVILLE
MEMORANDUM**

DATE: March 20, 2018

TO: Mayor Chirico and City Council

FROM: Allison Laff, AICP, Deputy Director – TED Business Group

SUBJECT: **DAC Feedback on Downtown Outdoor Seating**

PURPOSE:

To provide a summary of the Downtown Advisory Commission's feedback regarding Agenda Item L3 being considered by the City Council on March 21, 2018.

BACKGROUND:

The City Council conducted the first reading of an ordinance amendment pertaining to Chapter 3, Title 3, Section 11 (Liquor License and Permit Classifications) on March 6, 2018. Following their discussion, City Council requested feedback from the Downtown Advisory Commission (DAC) in reference to the proposed ordinance.

DISCUSSION:

DAC held a special meeting on March 19, 2018 to provide feedback on the subject ordinance. The draft minutes from this meeting are attached for review. The motions taken by DAC in response to the proposed ordinance can be found below:

1. Motion to require 8' clearance regardless of liquor/non-liquor service and require any requests less than 8' wide to be processed as a variance. This motion was followed by a motion in substitution to require a 6' minimum clear width, with 8' or wider preferred if possible.

Motion in substitution approved (5-1; 2 abstained)

2. Motion to permit outdoor seating between April 1 - November 1st; outside of those dates, require all equipment that is not permanently affixed to be removed and stored off-site.

Motion approved (7-0; 1 abstained)

3. Motion to require the fencing installed for outdoor seating for liquor establishments to be consistent with either the Downtown Design Guidelines or the Downtown Streetscape Standards.

Motion approved (5-0; 1 abstained)

DAC did not specifically discuss the sunset provision; however, Chairman Rubin indicated that he would like to poll the Commissioners for their input on this item. Any feedback that is received with respect to the sunset provision will be shared at the City Council meeting.

**LEASE AGREEMENT FOR SUITE #122 OF 120 WATER STREET
[HOTEL BUILDING]**

THIS LEASE AGREEMENT (“Lease Agreement”) is entered into this ____ day of _____, 2016 (“Effective Date”) between the City of Naperville, a municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois with offices located at 400 South Eagle Street, Naperville, IL 60540 (“Lessor”), and Water Street Property Owner, LLC, a Delaware Limited Liability Company with offices at 135 Water Street, 4th Floor, Naperville, Illinois 60540 (“Lessee”). Lessor and Lessee are together hereinafter referred to as the "Parties" and sometimes individually as “Party”.

RECITALS

- A. Lessor owns the Webster Street right-of-way located between Aurora Avenue and Water Street as legally described on **Exhibit A** and depicted on **Exhibit B** (“Lessor’s Property”).
- B. Lessee owns the real property located at the southeast corner of Water Street and Webster Street as legally described on **Exhibit C** and depicted on **Exhibit B** (“Lessee’s Property”) also known as Lot 1 of the Final Plat of Subdivision for the Water Street District/South Phase.
- C. Lessee’s Property contains a Hotel Building (as defined in the Redevelopment Agreement recorded with the DuPage County Recorder on April 2, 2015 as R2015-033515) which includes a restaurant on the first floor in the northwest corner of the building; said restaurant area is adjacent and contiguous to the Water Street and Webster Street rights-of-way depicted on **Exhibit B**.
- D. Lessee desires to lease a portion of Lessor’s Property for that portion of the public sidewalk of Lessor’s Property which is adjacent and contiguous to Lessee’s Property as legally described on **Exhibit D** and depicted on **Exhibit E** (“Leased Premises”) for the sole purpose of providing outdoor dining.
- E. Lessor finds that the space occupied by the Leased Premises is not necessary to be used as right-of-way and that allowing Lessee to use the Leased Premises as an outdoor dining area in the Water Street District serves a public purpose by promoting and encouraging a dynamic and inviting environment which will provide a transition between indoor and outdoor activities within the Water Street District in accord with the Water Street District Vision Statement and further finds.

WITNESSETH

1. Recitals Incorporated.

1.1 The Recitals above are hereby incorporated into and made a part of this Paragraph 1 as though fully set forth in this Paragraph 1.

2. Leased Premises/AS IS condition.

2.1 Lessor, for and in consideration of the covenants and agreements contained herein, hereby leases the Leased Premises to Lessee subject to the terms and conditions contained herein. The taking of possession of the Leased Premises by Lessee shall be conclusive evidence against the Lessee that the Leased Premises are in good and satisfactory condition. Further, Lessee accepts the Leased Premises on an "AS-IS" basis and Lessee is completely at risk with respect to all attributes and conditions, latent or otherwise, of the Leased Premises.

3. Consideration.

In consideration of the covenants and conditions herein contained:

3.1 Lessee shall pay Lessor \$4.30 per square foot of the Leased Premises, or a total of \$1,397.50 ("Lease Amount") each year this Lease Agreement is in effect (pro-rated for the first year). Said payment shall be made within thirty (30) days of the Effective Date of this Agreement for the pro-rated first year and shall thereafter be paid in January of each year. Failure to timely pay said Lease Amount shall be subject to the provisions of Paragraph 13 hereof.

3.2 Lessee shall be solely responsible for any tax assessment resulting from its leasehold interest in the Leased Premises. Notwithstanding the foregoing, Lessee shall have the right to object to the amount of such real estate taxes, and the imposition of, and valuation for, such real estate tax. Further, Lessee shall insure the Leased Premises as specified in Paragraph 7 below.

4. Use of the Leased Premises.

4.1 Lessee may use the Leased Premises for the purpose of providing outdoor dining subject to the following conditions:

4.1.1 Alcohol may be allowed on the Leased Premises only to the extent and as specifically permitted pursuant to required liquor license

and/or associated permits, and only so long as such liquor license and permits remain in good standing.

4.1.2 Lessee may place tables, chairs, planters, lights, heaters (“Appurtenances”) on the Leased Premises so long as such Appurtenances: (a) comply at all times with all applicable laws and regulations, including but not limited to the Naperville Municipal Code as amended from time to time; (b) are at all times within the boundaries of the Leased Premises; and (c) comply with any applicable provisions of any liquor license or permit affecting the Leased Premises.

4.1.2.1 Lessee may install permanent fencing on the Leased Premises upon prior written approval of the City Mayor, or his or her designee, of the location, type, and materials of said fencing, and so long as such fencing is at all times maintained in good condition.

4.1.2.2 Additional items not listed as Appurtenances above may be deemed Appurtenances upon request of the Licensee with the prior written approval of the City Manager, or his or her designee.

4.1.3 Lessee shall not install or construct any structures, whether temporary or permanent, including but not limited to fencing, on the Leased Premises without prior review and written approval of Lessor.

4.1.4 Lessee’s continued use of the Leased Premises is subject to:

4.1.4.1 Lessee maintaining the Leased Premises in a safe and clean condition at all times, including but not limited to immediate elimination of litter or debris on the Leased Premises;

4.1.4.2 Lessee not permitting any mechanics, or other, lien to be filed against the Leased Premises, or any part thereof. Notwithstanding the foregoing Lessee shall have the right to contest the validity or amount of any such lien or claimed lien on the condition that Lessee shall defend, indemnify, and hold Lessor and its officers, agents, employees, and representatives harmless as provided in Paragraph 6 hereof;

4.1.4.3 Lessee’s continued compliance with all requirements of any liquor license and/or associated permits issued which affects the Leased Premises; and

4.1.4.4 Lessee's compliance with all terms and conditions contained or referenced herein.

5. Maintenance and Repair.

5.1 Lessee, at its own expense, shall repair, replace, and maintain the Leased Premises and all Appurtenances during the term of this Lease Agreement.

6. Defense, Indemnification, and Hold Harmless.

6.1 Lessee shall defend (with legal counsel approved by Lessor, which approval shall not be unreasonably withheld), indemnify, and hold harmless the Lessor, City of Naperville, and its officers, agents, employees, and representatives from and against any cost, liability, judgment, expenses, attorneys' fees, claims, actions or damages of any kind, including but not limited to personal injury, death, property damage, and any mechanics or other lien, arising out of any act or omission of Lessee or its employees, agents, representatives, invitees, and contractors, including but not limited to Lessee's use of the Leased Premises or any activity done or permitted by Lessee or by Lessee's employees, agents, representatives, invitees, or contractors, in, on or about the Leased Premises and any negligent, intentional, tortious, and/or illegal act or omission of Lessee or its employees, agents, representatives, invitees, or contractors. The defense and indemnity provided herein is independent of and shall not be limited by reason of the enumeration of any insurance coverage which Lessee has obtained. Nothing contained herein shall be construed as a limitation or waiver of defenses available to the Lessor and its agents, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

7. Insurance.

7.1 At all times this Lease Agreement is in effect Lessee (or sub-lessee, as applicable) shall comply with the insurance requirements set forth in **Exhibit F**.

8. Assignment and Sublease.

8.1 Assignment. Neither Party may transfer or assign this Lease Agreement without the other Party's written approval.

8.2 Sublease. Lessee may sub-lease the Leased Premises to another party upon the following conditions:

(a) Lessee has given notice of intent to sub-lease ("Notice of Intent to Sublease") to the City Manager including pertinent information

relative to the identity, background, and contact information for the proposed sub-lessee. In said Notice of Intent to Sublease, Lessee shall confirm and acknowledge that said sublease shall not relieve Lessee of its obligations and covenants under this Lease Agreement; and

- (b) Lessee has obtained prior written approval of the proposed sublease from Lessor, which approval may be provided by the City Manager, or by his or her designee. Said consent shall not be unreasonably withheld so long as the proposed sublease is to a high quality restaurant which does not specialize in fast food.

8.2.1 Upon a sublease of the Leased Premises, Lessee and sub-lessee shall be jointly and severally liable for all Lessee obligations hereunder except that: (i) sub-lessee may not terminate this Lease Agreement; (ii) sub-lessee shall be solely responsible for obtaining and maintaining any desired liquor license and permits; and (iii) sub-lessee shall be solely responsible to provide insurance as required herein except when no sublease is in effect during which time Lessor shall be responsible to provide insurance as required herein.

Any sublease between Lessee and a sub-lessee shall clearly and specifically articulate this provision. Any approved sub-lessee shall fully complete and execute that Assumption of Obligations attached hereto as **Exhibit G**.

9. Term.

- 9.1 This Lease Agreement shall commence on the Effective Date set forth on page 1 hereof. It shall terminate on December 31, 2021. Notwithstanding the foregoing provision, this Lease Agreement shall automatically renew for additional one (1) year periods (January 1st through December 31st) for a period not to exceed nineteen (19) years from the Effective Date unless either Party gives notice of non-renewal to the other not less than ninety (90) days prior to the expiration of then current term. Notice shall be given in accord with the provisions of Paragraph 12 hereof.

10. Termination.

- 10.1 In addition to its right not to renew this Lease Agreement as set forth in Section 9 above, Lessor may terminate this Agreement upon thirty (30) days' written notice to Lessee in the event that Lessor determines that Lessee has breached this Agreement and such breach has not been cured within thirty (30) days of Notice of such breach. A breach of any term and or condition set forth or referenced in this Lease Agreement and/or in any sublease or Assumption of Obligations by a sub-lessee shall be deemed a breach of this Lease Agreement by Lessee.

10.2 Lessee may terminate this Agreement upon not less thirty (30) days' written notice to Lessor; however such termination shall not be effective until Lessee has restored the Leased Premises to the condition that it was in prior to Lessee's use of the Leased Premises or such other condition as is mutually agreed upon in writing by Lessee and the City Manager.

11. Surrender of Possession/Removal and Restoration of the Leased Premises.

11.1 Upon termination or expiration of this Lease Agreement, Lessor shall surrender the Leased Premises from which all Appurtenances, other than those agreed to in writing by the City Manager and the Lessee, shall be removed from the Leased Premises by Lessee and the Leased Premises shall have been restored to the same or better condition, as determined by the City Engineer, which existed before Lessee's use of the Leased Premises. Any Appurtenances not removed within thirty (30) days after the termination or expiration of this Lease Agreement may be removed and disposed of by Lessor. Any costs expended by Lessor to restore the Leased Premises, if such restoration is not accomplished by Lessee as provided herein, shall be fully reimbursed by Lessee as provided herein.

12. Notice.

12.1 When notice ("Notice") is required herein it shall be given by FedEx or overnight mail, or by prepaid registered or certified mail, addressed to the individuals or entities set forth below:

IF TO THE LESSOR:

City of Naperville
Attention: City Manager
400 South Eagle Street
Naperville, IL 60540

WITH COPIES TO:

City of Naperville
Attention: City Engineer and City Attorney
400 South Eagle Street
Naperville, IL 60540

IF TO THE LESSEE:

Nicholas M. Ryan
Water Street Property Owner, LLC
135 Water Street, 4th Floor
Naperville, Illinois 60540

WITH COPIES TO:

Kathleen C. West

Dommermuth, Cobine, West, Gensler, Philipchuck, Corrigan and Bernhard, Ltd.
111 East Jefferson Avenue, Suite 200
Naperville, Illinois 60540

Lessor and Lessee may, by written Notice to the other Party, substitute names and addresses for notices as appropriate.

13. Right to Lien/Other Remedies.

- 13.1 Wherever costs, fees, reimbursement and/or the Lease Amount is to be paid to Lessor as provided herein, the same shall be promptly paid in full by Lessee as provided in Paragraph 3.2 with respect to the Lease Amount, and within thirty (30) days of issuance of a bill therefor for all other amounts due. If Lessee fails to make such payment, Lessor may lien Lessee's Property for said costs, plus attorney's fees and costs (in-house or outside counsel), and/or take any other action it deems appropriate at law or in equity. Any lien or liens hereunder shall be recorded with the DuPage County Recorder and shall constitute a lien on Licensee's Property deemed to run with the land. Such lien or liens shall be superior to all subsequent liens and encumbrances. Such lien or liens may be enforced by Lessor by proceedings to foreclose such as in the case of mortgage and mechanic's liens.

14. General Provisions:

- A. Amendment. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
- B. Choice of Law and Venue. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance. Venue for action arising out the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- C. Severability. In the event that one or more of the provisions contained in this Agreement should for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- D. Ambiguity. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

- E. Recordation. This Lease Agreement, or a memorandum thereof as agreed to by the Parties, shall be recorded in the Office of the DuPage County Recorder.
- F. No Waiver. No waiver or any breach of any one or more of the conditions or covenants of this Lease by the Lessor or by the Lessee shall be deemed to imply or constitute a waiver of any succeeding or other breach under this Lease Agreement.
- G. Subordination. Lessor's rights and interests under this Lease Agreement shall not be subordinated to any other interest.
- H. Attorneys' Fees. Lessee shall be responsible to pay Lessor's reasonable attorneys' fees and costs (whether in-house or outside counsel) associated with enforcement of any aspect of this Lease Agreement.
- I. Exhibits Incorporated. Any exhibit referenced herein is incorporated herein and made part hereof.
- J. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Lease Agreement and shall not be used in construing it.
- K. Authorization. The undersigned warrant and represent that they are authorized to execute this Lease Agreement. A certified copy of resolution or minutes approving execution of this Lease Agreement by Lessee is attached hereto as **Exhibit H**.
- L. Survival. All provisions of this Agreement which provide that the City is owed money or is otherwise entitled to reimbursement for any reason and the provisions contained in the following paragraphs shall survive any revocation, termination or novation of this Agreement: 2, 3, 5, 6, 8.2.1, 10.2, 11, 13, 14B, 14C, 14D, 14F, 14G, 14H, 14I, 14J, and 14L.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease Agreement as of the Effective Date entered on page 1 hereof.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE/LESSOR

By: _____
Steve Chirico
Mayor

Attest:

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

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Steve Chirico, personally known to me to be the Mayor of the City of Naperville, and Pam Gallahue, personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the Mayor and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this _____ day of _____, 2016.

(seal)

Notary Public

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

State of Illinois)
) ss
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that Nicholas M. Ryan, appeared before me this day in person and
acknowledged the signature(s) set forth above.

Given under my hand and official seal this _____ day of _____, 2016.

(seal)

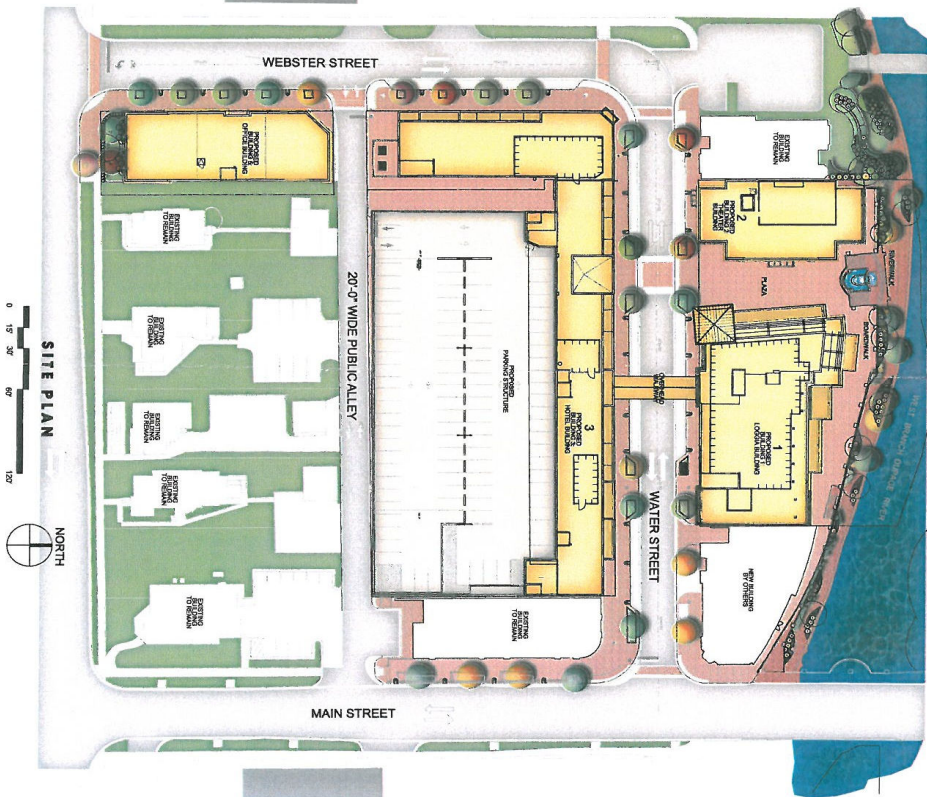
Notary Public

This instrument prepared by: Legal Department, City of Naperville, 400 South Eagle Street,
Naperville, IL 60540.

EXHIBIT A
LEGAL DESCRIPTION – LESSOR’S PROPERTY

THAT PART OF 66-FOOT WIDE DEDICATED WEBSTER STREET PER DOCUMENT NUMBER 2584, LYING SOUTH OF THE SOUTH LINE OF 57-FOOT WIDE WATER STREET PER DOCUMENT NUMBER R2015-033504 AND NORTH OF THE NORTH LINE OF 66-FOOT WIDE AURORA AVENUE PER DOCUMENT NUMBER 2584, IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B WATER STREET DISTRICT MAP



SITE PLAN

DEVELOPMENT BY:
M
MARQUETTE COMPANIES

REVISION:
SET 10, 2014

WATER STREET DISTRICT
NAPEVILLE, ILLINOIS 60540

Prepared by:
Lidbeck Design Group
CREATING THE IDEAL ENVIRONMENT

SULLIVAN GOWLETTE & WILSON
ARCHITECTS
1000 N. STATE STREET, SUITE 1000, CHICAGO, IL 60610

PC-3

EXHIBIT C
LEGAL DESCRIPTION – LESSEE’S PROPERTY

LOT 1 IN THE WATER STREET DISTRICT SOUTH PHASE, BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON APRIL 2, 2015 AS DOCUMENT NO. 2015-033508 IN DUPAGE COUNTY, ILLINOIS.

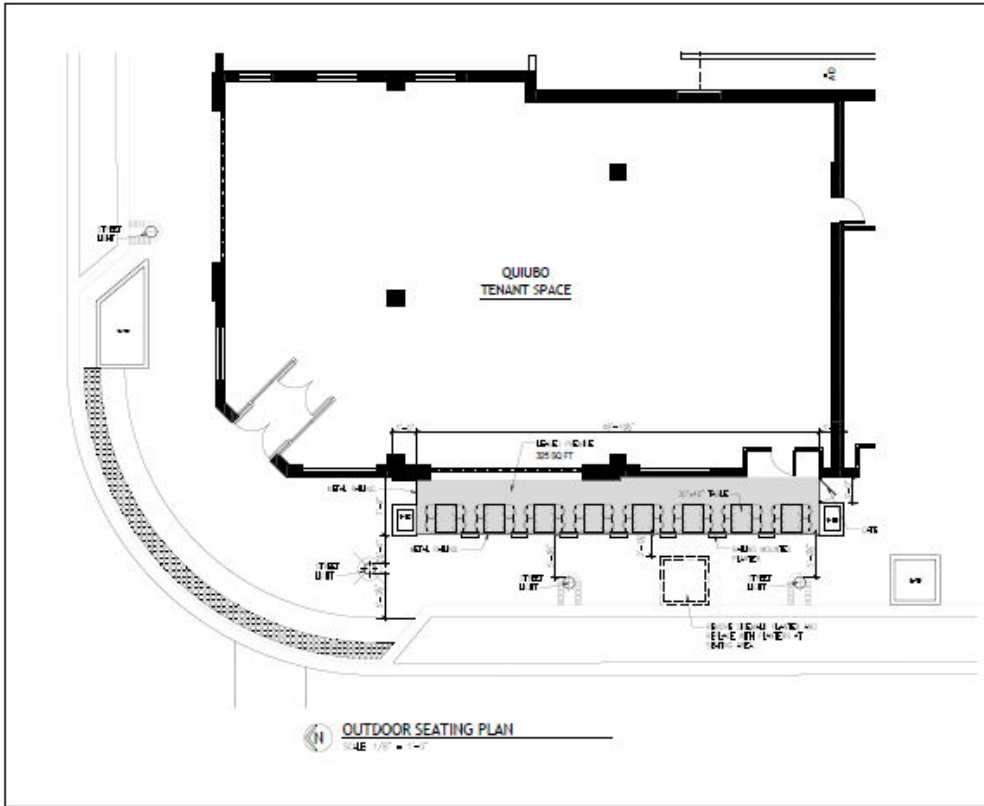
PINS: 07-13-442-021/022

ADDRESS: 120 WATER STREET

EXHIBIT D
LEGAL DESCRIPTION – LEASED PREMISES

THE SOUTH 48.88 FEET OF THE NORTH 73.38 FEET OF THE EAST 7.00 FEET OF THAT PART OF 66-FOOT WIDE DEDICATED WEBSTER STREET PER DOCUMENT NUMBER 2584, LYING IMMEDIATELY SOUTH OF THE SOUTH LINE OF 57-FOOT WIDE WATER STREET PER DOCUMENT NUMBER R2015-033504, IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT E LEASED PREMISES



PRELIMINARY NOT FOR
CONSTRUCTION
08/05/2016

PROJECT
QUIUBO
WATER STREET DEVELOPMENT
HARDVILLE, IL
FOR
SIN TRUONG
PROJECT NUMBER: 15055

ISSUE
RE-ISSUE

DESCRIPTION
OUTDOOR SEATING PLAN

TORCH ARCHITECTURE INC.
2701 SPRINGFIELD STREET, HARDVILLE, ILLINOIS
PH: 618-244-7000 FAX: 618-244-7001
WWW.TORCHARCHITECTURE.COM

SK 01

EXHIBIT F
INSURANCE REQUIREMENTS FOR THE
LEASE AGREEMENT FOR SUITE #122 OF 120 WATER STREET, NAPERVILLE, IL

*Lessee shall procure and maintain for the duration of the Lease Agreement to which this Exhibit F is attached insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the Leased Premises (as defined in the Lease Agreement to which this Exhibit F is attached) as set forth herein. The cost of such insurance shall be borne by the Lessee. At Lessor's request, Lessee shall provide Lessor with a copy of policy declarations and endorsements to facilitate Lessor's verification of required coverages.

***Upon as sublease of the Leased Premises**, sub-lessee shall be solely responsible to provide insurance as required herein except when no sublease is in effect during which time Lessor shall be responsible to provide insurance as required herein. Any sublease between Lessee and a sub-lessee shall clearly and specifically articulate this provision.

MINIMUM SCOPE AND LIMIT OF INSURANCE. Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of Illinois, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Lessor requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Lessor.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Lessor and its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance at (least as broad as ISO Form CG 20 10).

Primary Coverage

For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Lessor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Lessor/City of Naperville per the notice requirements set forth in Paragraph 7 of the Lease Agreement.

Waiver of Subrogation

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Lessor.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Lessor. At the option of the Lessor, either: the Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Lessor, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Lessor guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lessor.

Verification of Coverage

Lessee shall furnish the Lessor with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Lessor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Waiver of Subrogation

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

Lessor reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Liquor Liability

If Lessee or sub-lessee, intend to sell alcohol, the Lessee or sub-lessee, as applicable, must have a valid liquor sales license and related permits, and liquor liability insurance with limits no less than \$2,000,000 per occurrence covering the sale of alcohol which covers Lessee's Property and the Leased Premises.

H:\Users\LordP\Water Street Project\Encroachment & Other Agreements\Lease Exhibit F - Insurance Requirements.doc

EXHIBIT G
ASSUMPTION OF CERTAIN LEASE AGREEMENT
OBLIGATIONS FOR SUITE #122 OF 120 WATER STREET

THIS ASSUMPTION OF CERTAIN LEASE AGREEMENT OBLIGATIONS FOR SUITE #122 OF 120 WATER STREET, NAPERVILLE (“**Agreement**”) is entered into as of the _____ day of _____, 2016 (“**Effective Date**”), between Water Street Property Owner, LLC, a Delaware limited liability company (“**Lessee**”), and _____ (“**Sub-Lessee**”).

RECITALS

A. Water Street Property Owner, LLC, a Delaware limited liability company has entered into a Lease Agreement For Suite #122 of 120 Water Street dated _____ (“**Lease Agreement**”), a copy of which is attached hereto and made a part hereof as **Exhibit A**, with the City of Naperville, Illinois, an Illinois municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois (“**City**”) which Lease Agreement was recorded with the DuPage County Recorder of Deeds on _____ as document number _____.

B. The Lease Agreement is intended to provide the tenant of Suite #122 of 120 Water Street with approximately 400 square feet of City sidewalk for outdoor dining (“**Leased Premises**”).

C. Lessee desires to sublease the Leased Premises to _____ (“**Sub-Lessee**”),

D. By this Agreement, Lessor subleases the Leased Premises to Sub-Lessee subject to the terms and conditions set forth or referenced herein and as set forth in the Lease Agreement.

E. Lessor and Lessee are jointly and severally obligated for all obligations set forth in the Lease Agreement except as specifically provided herein and in Section 8.2 of the Lease Agreement.

AGREEMENT

NOW, THEREFORE, Lessee and Sub-Lessee hereby agree as follows:

1. Recitals Incorporated. The Recitals above are hereby incorporated into and made a part of this Paragraph 1 as thought fully set forth in this Paragraph 1.

2. Sublease. Lessee hereby subleases to Lessee the Leased Premises. Lessor and Lessee shall be jointly and severally obligated for all obligations set forth in the Lease Agreement except as specifically provided in Section 8.2 of the Lease Agreement which provides that:

8.2 Sublease. Lessee may sub-lease the Leased Premises to another party upon the following conditions:

- (c) Lessee has given notice of intent to sub-lease (“Notice of Intent to Sublease”) to the City Manager including pertinent information relative to the identity, background, and contact information for the proposed sub-lessee. In said Notice of Intent to Sublease, Lessee shall confirm and acknowledge that said sublease shall not relieve Lessee of its obligations and covenants under this Lease Agreement; and
- (d) Lessee has obtained prior written approval of the proposed sublease from Lessor, which approval may be provided by the City Manager, or by his or her designee. Said consent shall not be unreasonably withheld so long as the proposed sublease is to a high quality restaurant which does not specialize in fast food.

8.2.1 Upon a sublease of the Leased Premises, Lessee and sub-lessee shall be jointly and severally liable for all Lessee obligations hereunder except that: (i) sub-lessee may not terminate this Lease Agreement; (ii) sub-lessee shall be solely responsible for obtaining and maintaining any desired liquor license and permits; and (iii) sub-lessee shall be solely responsible to provide insurance as required herein except when no sublease is in effect during which time Lessor shall be responsible to provide insurance as required herein. Any sublease between Lessee and a sub-lessee shall clearly and specifically articulate this provision. Any approved sub-lessee shall fully complete and execute that Assumption of Obligations attached hereto as **Exhibit G**.

3. Acceptance and Assumption of obligations by Sub-Lessee. Sub-Lessee hereby expressly and for the benefit of the City of Naperville accepts the obligations set forth in the Lease Agreement as to the Leased Premises.

4. Lease Agreement in Full Force and Effect. All the terms, covenants, conditions and provisions of the Lease Agreement are hereby ratified and shall remain in full force and effect.

5. Recording. Lessee shall cause this Agreement to be recorded with the Office of the DuPage County Recorder, Illinois, and shall promptly provide conformed copies of the recorded Agreement to Sub-Lessee and the City.

6. Sub-Lessee Address for Notices. The address of Sub-Lessee for the purpose of notices, demands and communications hereunder shall be:

[INSERT SUB-LESSEE'S ADDRESS]

7. Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without reference to choice of law provisions. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

8. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

9. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

10. Severability. If any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

12. Effective Date. The Effective Date of this Agreement shall be the date set forth on page 1 of this Agreement

IN WITNESS WHEREOF Lessee and Sub-Lessee have entered into this Agreement as of the Effective Date written.

[INSERT SIGNATURE PAGES AND NOTARY BLOCKS
FOR ASSIGNOR/LESSEE AND ASSIGNEE/SUB-LESSEE]

EXHIBIT H
RESOLUTION OF
WATER STREET PROPERTY OWNER, LLC

The undersigned, being an authorized representative of the Sole Member of WATER STREET PROPERTY OWNER, LLC, a Delaware limited liability company (the "Company"), hereby approves the following action, pursuant to the Delaware Limited Liability Company Act and the terms of the Water Street Property Owner, LLC Operating Agreement, and waiver all notice pursuant to the Act and the aforesaid Agreement. The following action is approved:

WHEREAS, the Company entered into a Lease Agreement with the City of Naperville, an Illinois Municipal Corporation, dated August __, 2016, for the lease of 325 square feet of right-of-way to be used as an outdoor dining area located at 120 Water Street, Naperville, Illinois.

WHEREAS, the Company's Sole Member is WATER STREET PROPERTY MEZZ, LLC, a Delaware limited liability company, ("Sole Member").

RESOLVED, the Sole Member hereby authorizes the Company at any time hereafter and without further action by or authority or direction from the Sole Member of the Company, to execute the Lease Agreement and any other documents necessary to lease real property on behalf of the Company in the ordinary course of business and to do or cause to be done all such other and further acts and things as it may determine to be necessary or advisable under or in connection with the lease on behalf of the Company and that the execution by such entity of any such document, or the doing of any such act or thing, shall be conclusive evidence of its determination in that respect.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and caused the Seal of said Company to be hereunder affixed this ____ day of _____, 2016.

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