

EXHIBIT A – Page 1

WAAR Tract

Approximately 9,000-10,000 square feet of land presently identified as the Building B-2 building and parking area site on the WaterWalk Master Plan Revision, as depicted on page 2 of this Exhibit “A.”

EXHIBIT A – Page 2

Depiction of WAAR Tract

[see attached]

EXHIBIT B

Form of Assignment

**PARTIAL ASSIGNMENT OF
WATERWALK DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT OF WATERWALK DEVELOPMENT AGREEMENT (this “Assignment”) is made and entered into effective _____, 20__, by and between by and between Wichita Area Association of REALTORS (“Assignee”) and WaterWalk, LLC (“Assignor”).

For good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee, the following rights and obligations of Assignor pursuant to the following-listed Sections of the Development Agreement and no others, but only to the extent such rights and obligations apply to the WAAR Tract and the Private Improvements to be located upon the WAAR Tract (hereafter collectively the “Assigned Rights and Obligations”), and in no event shall the Assigned Rights and Obligations include any rights or obligations of Assignor regarding the Project or Project Parcels other than the WAAR Tract, any Private Improvements other than those to be located on the WAAR Tract, any Public Improvements, any rights to amend or modify the Development Agreement: Sections: 4 to the extent assignable (except not 4.1(a) or 4.1(b)), 5.1-5.4 (except not 5.1.2(e) or 5.4(g)), 6.1, 6.3, 7.1-7.3, 9.1, 9.3-9.5, 10, 11 (except no assignment of rights under 11.3(b) to take from the City a ground lease for any portion of the Project Parcels), 12, and 13; and to the following Sections to the extent assignable: 14.1-14.7, 14.9-14.15, and 14.17-14.21.

2. Assumption of Obligations. Assignee hereby assumes and agrees to perform all of the commitments, obligations, terms, provisions, conditions and covenants of the Assigned Rights and Obligations which Assignor has assumed. Assignee agrees to defend, indemnify, and hold harmless Assignor from any liability, damages, causes of action, expenses and attorneys’ fees (including appellate fees) incurred by Assignor by reason of the failure of Assignee to fulfill, perform and discharge all of its various commitments, obligations, terms, provisions, conditions and covenants of the Assigned Rights and Obligations which Assignor has assumed.

3. Expenses. Assignee hereby assumes and agrees to perform all of the commitments, obligations, terms, provisions, conditions and covenants imposed upon the ground lessee of the WAAR Tract by the Declaration, as may be amended, including but not limited to payment of the WaterWalk Parking District fees due attributable to any building to be located upon the WAAR Tract, as such fees are due to the City pursuant to the WaterWalk Parking District Agreement, a copy of which is attached hereto as Exhibit A, as the same may be amended, but limited by the following three sentences:

Notwithstanding any provision herein to the contrary, Assignor agrees and covenants that Assignee’s obligation for Assessments (as that term is defined in

the Declaration) levied pursuant to Sections 3.03 and 3.05 of the Declaration for any one calendar year after the Base Calendar Year shall not exceed an amount equal to 105% of the Assessments levied pursuant to Sections 3.03 and 3.05 of the Declaration in the immediately preceding calendar year. The "Base Calendar Year" is defined as the first full calendar year (January 1 through December 31) after all Public Improvements are completed within and upon the Project Parcels. Assignor agrees to defend, indemnify and hold harmless Assignee from any liability, damages, causes of action, expenses, and attorneys' fees (including appellate fees) incurred by Assignee by reason of the failure of Assignor to not fulfill and perform Assignor's covenants set forth in this Section.

Assignee agrees to defend, indemnify, and hold harmless Assignor from any liability, damages, causes of action, expenses and attorneys' fees (including appellate fees) incurred by Assignor by reason of the failure of Assignee to fulfill, perform and discharge all of such various commitments, obligations, terms, provisions, conditions and covenants.

4. Governing Law. Notwithstanding the place where the parties execute this Assignment, the internal laws of Kansas, without regard for the principles of conflicts of laws thereof, shall govern the construction of the terms and the application of the provisions of this Assignment.

5. Severability. If a court of competent jurisdiction holds any provision of this instrument invalid or ineffective with respect to any person or circumstance, the holding shall not affect the remainder of this instrument or the application of this instrument to any other person or circumstance. If a court of competent jurisdiction holds any provision of this instrument too broad to allow enforcement of the provision to its full extent, the court shall have the power and authority to enforce the provision to the maximum extent permitted by law and may modify the scope of the provision accordingly pursuant to an order of the court.

6. Terms. Capitalized terms not otherwise defined herein shall have the definitions attributed to them in the Agreement to Purchase and Sell Partial Assignment of WaterWalk Development Agreement dated _____, 2006, between Assignor and Assignee.

Executed effective as of the _____ day of _____, 20__.

ASSIGNEE:

Wichita Area Association of REALTORS

By: _____
Printed Name: _____
Its: _____

ASSIGNOR:

WaterWalk, LLC

By: _____

Printed Name: _____

Its: _____

EXHIBIT A to EXHIBIT B
WATERWALK PARKING DISTRICT AGREEMENT

THIS WATERWALK PARKING DISTRICT AGREEMENT (the “WaterWalk District Agreement”) is made as of this _____ day of May, 2006 by and between the CITY OF WICHITA, KANSAS, a corporate body politic and political subdivision of the State of Kansas (the “City”), and WaterWalk, LLC (WaterWalk)

Recitals

WHEREAS, the City owns and operates parking facilities located throughout the Central Business District of Wichita, Kansas; and

WHEREAS, the City has entered into Parking District Agreements in other areas of the Central Business District; and

WHEREAS, the WaterWalk is a party to the Development Agreement Regarding Development of the East Bank, dated September 10, 2002, as amended, and a portion of the real property subject to the terms of said Development Agreement includes the real property located within the WaterWalk Parking District boundaries more particularly described on Attachment “A” attached hereto (the “WaterWalk Parking District”), and desires to enter into a WaterWalk Parking District Agreement that sets forth the terms and conditions whereby certain payments will be made by WaterWalk to the City of Wichita which are designed to cover a portion of the cost to the City of Wichita of constructing, operating and maintaining parking improvements that are or will be located in the WaterWalk Parking District; and

WHEREAS, WaterWalk cannot provide all of the necessary off-street parking spaces to accommodate and serve the parking needs of WaterWalk Parking District tenants, residents and/or guests as well as the general public;

NOW, THEREFORE, in order to carry out the recitals described above as well as other matters, the parties agree as follows:

Section 1

Zoning

The parking spaces in such parking improvements for which WaterWalk makes payments as set forth herein to the City of Wichita shall qualify as off-street parking spaces for purposes of satisfying any requirements of any current or future zoning ordinances of the City of Wichita, or be exempt from such future zoning ordinances as a non-conforming use, as to each portion of the WaterWalk Parking District subject to a ground lease, provided that the initial use of such leased property does not change.

Section 2

Parking Fees Rates

A schedule of the monthly parking fee payments to be made for each parking space in the WaterWalk Parking District is set out in Attachment “B”, which is attached hereto and incorporated herein by reference. Payments for the total number of parking spaces set forth in Attachment “C” must be made to the City of Wichita in order to satisfy the parking requirements for the use being made of each portion of the WaterWalk Parking District subject to a ground lease.

Payments for parking spaces shall be made by WaterWalk (which WaterWalk may devolve in whole or in part to other tenants and subtenants within the WaterWalk Parking District by lease, Declaration of Covenants, Conditions and Restrictions of Wichita WaterWalk filed of record against the WaterWalk Parking District, as may be amended, or pursuant to other covenants or agreements) in advance and without notice or demand in accordance with the schedule set out in Attachment “B” and the provisions hereof. WaterWalk shall make advance payments monthly, quarterly, semiannually or annually at the rates set forth in Attachment “B”. At the end of the schedule set out in Attachment “B”, payments shall be based on monthly rates that will be

established based upon the amount actually budgeted for the maintenance and repair of the WaterWalk Parking District parking improvements. Currently, rates are fixed at a rate per space per month as set forth in Attachment “B” pending review of the rate schedule by WaterWalk and the City. Upon completion of said review, rates will be adjusted and Attachment “B” shall be adjusted accordingly.

Payments shall be made in advance by WaterWalk and shall be calculated by multiplying the number of parking spaces required for a particular completed building, based on its initial intended use, as set out in Attachment “C” hereof, times the appropriate rate for the current year as set out in Attachment “B” hereto. The first payment for parking satisfying the parking requirements of a particular building located upon a portion of the WaterWalk Parking District real property leased from the City pursuant to a ground lease shall be due and payable on the first calendar day of the month following the date a Certificate of Occupancy is issued for such building, and all subsequent payments due because of the completion of such building shall be due and payable on the first calendar day of each month. The first payment shall be a full monthly payment plus a pro-rated portion of the monthly payment based on the total number of days from the date of the Certificate of Occupancy to the first day of the following month times the total number of spaces required for a particular completed building, based on its initial intended use, as set out in Attachment “C” times the prorated fee per space set out in Attachment “B.” Payments not received on or before the due date (postmarks are not acceptable) will be assessed by the City both an administrative fee and daily late fees consistent with statutory limitations until the balance due is paid in full and/or placed as a lien against the property as hereinafter described.

Any change in use of a building within the WaterWalk Parking District which either increases or decreases the number of off-street parking spaces required or the number of off-street parking spaces provided, and which, as a consequence, either increases or decreases the payment to be made hereunder, shall be reported to the City of Wichita, Office of Central Inspection, in writing and an adjustment will be made starting with the next payment due after the City’s receipt of such written notice. Provided, however, that the City may, upon determining that any such change in use has occurred which increases the payment to be made hereunder, give written

notice to WaterWalk of such increase and such increased payment shall be effective with the next payment due together with all retroactive increases identified in such written notice.

The cessation of any use of the building(s) within the WaterWalk Parking District for a period of less than one (1) month shall not be a change in use for which an adjustment decreasing the payment is to be made. WaterWalk agrees to provide written notification to the City of any business and/or use change within five (5) calendar days from WaterWalk's receipt of notice of each such occurrence. WaterWalk's obligations hereunder shall terminate as of the date such tenant or subtenant permanently surrenders possession of interest in the property within the WaterWalk Parking District.

So long as the payments to be made hereunder are made when due, and all other provisions of this Agreement are complied with, WaterWalk and other tenants and subtenants within the WaterWalk Parking District shall have a non-exclusive right to utilize parking lots and/or other parking facilities constructed by the City of Wichita for the WaterWalk District and to count the total number of parking spaces set out in Attachment "B" hereof towards the requirements to provide off-street parking that may be required under the WaterWalk P.U.D. for existing and future construction in the WaterWalk Parking District.

WaterWalk agrees to not challenge or oppose the creation of a municipal improvement district or a business improvement district, pursuant to the statutes of the State of Kansas, covering all or any portion of the WaterWalk Parking District.

Section 3

Variance

WaterWalk hereby agrees not to request any variance of the provisions of the off-street parking requirements of the WaterWalk P.U.D. as it now reads. Any such request for variance shall be a breach of this agreement. Provided, however, that nothing contained herein shall limit the ability of WaterWalk to question or challenge the calculation of the off-street parking requirements under said P. U. D. with respect to the categorization of the use being made of the subject

property; the size or occupancy of such use; or any other element that goes into the formula for determining the off-street parking requirement for such use. If the City amends the zoning code to increase the parking required for any use in the WaterWalk Parking District, the City will grant WaterWalk a variance as long as the use does not change.

Section 4
Remedy

In addition to and as a complete alternative to all other remedies that the City of Wichita may be entitled to under the law, WaterWalk agrees that all sums to be paid hereunder, when delinquent, may be certified by the Clerk of the City of Wichita to the County Clerk of Sedgwick County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as other taxes, and such sums shall, thereafter, constitute a lien upon the above described property of WaterWalk. In addition, the City of Wichita may rescind a certificate of occupancy for the building to which the unpaid parking rates may apply once such parking payments are more than six (6) months delinquent.

Section 5
City Approval

Whenever this Agreement calls for approval by the City, such approval shall be given by the City Manager of the City, or his or her designee, unless otherwise specified. The City Manager may, at his or her sole discretion, choose to refer any approval required by this Agreement to the City Council for approval.

Section 6
Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

Section 7
Governing Law

This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Kansas only.

Section 8
No Waiver

No failure of a Party to exercise any power given such Party hereunder or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

Section 9
Headings

The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 10
Covenant

This agreement shall be a covenant running with the real estate located within the WaterWalk Parking District and this instrument may be filed of record with the Register of Deeds of Sedgwick County, Kansas.

Section 11
Obligations

Nothing contained herein shall be interpreted to obligate the City of Wichita to construct any particular parking improvements; nor shall anything herein be construed to confer on WaterWalk any right of action to compel the City of Wichita to construct any specific manner or size of parking improvements in or around the WaterWalk Parking District. Nor shall WaterWalk be obligated to make any payments set forth herein unless the improvements are actually constructed by the City.

Section 12
Operation of Parking

The City is responsible for operating, maintaining and repairing the parking improvements located in the WaterWalk Parking District in a manner generally associated with the quality of Class A property in the Wichita area.

Section 13
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 14
Assignability

This Agreement may be assigned by WaterWalk in connection with any sale, transfer, pledge, or assignment of WaterWalk's rights without the consent or prior approval of the City. WaterWalk shall give notice of such transfer to the City in a reasonable amount of time following completion thereof.

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of WaterWalk, LLC, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of WaterWalk, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

ATTACHMENT "A," PAGE 1

WaterWalk Parking District Legal Description

[insert yet]

ATTACHMENT "A," PAGE 2

Depiction of WaterWalk Parking District

[see attached]

ATTACHMENT “B”
WATERWALK PARKING DISTRICT

15 YEAR
 Parking Assessment Rates

Year Starting <u>January 1</u>	Monthly Rate <u>Per Space</u>
2006	\$?
2007	\$?
2008	\$?
2009	\$?
2010-2018	\$?

OTHER CURRENT RATES AND FEES:

Daily Prorated Fee per Space	1/30 th of the annual monthly rate per space
Non- Contract Fair Market Rate	\$ 50.00 per space per month
Administrative Fee	\$50.00 per failure to pay by due date
Late Fees:	\$5.00 per day

* These rates and fees are subject to change as determined and announced annually by the City and WaterWalk LLC.

ATTACHMENT "C"
Parking Space Requirements

Owner/Tenant:

Property Description

Number of Parking Spaces Required:

Square Footage of Leased Premises and/or No. of Seats: _____

Required Spaces per Sq. Ft or Seat: _____

Total Spaces Required: _____

Parking Space Requirements (General Guidelines)

Retail: 5 spaces per 1,000 square feet of occupied space

Office: 4 spaces per 1,000 square feet of occupied space

Residential: 1.5 spaces per residential unit

Restaurant: 1 space for each 3 seats

Bar: 1 space for each 4 seats

EXHIBIT C

Form of WAAR Tract Ground Lease

WATERWALK GROUND LEASE NO.

THIS GROUND LEASE, made and entered into at Wichita, Kansas, as of the ____ day of _____, 200__ (“Commencement Date”).

BY AND BETWEEN

City of Wichita, Kansas,
a Kansas municipality,

“Landlord”

AND

Wichita Area Association of REALTORS,
a Kansas corporation,

“Tenant”

WITNESSETH: That;

WHEREAS, Landlord is the owner of the Premises described herein; and

WHEREAS, Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease;

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I

Basic Terms and Definitions

The following basic terms and definitions shall be applicable to the various provisions of this Lease:

Expiration Date. Unless earlier terminated pursuant to the terms hereof, this Lease shall expire at the end of the Term (defined below).

Minimum Rent. The Minimum Rent is set forth in Section 5.01 hereof.

Notices. The addresses for any notices required or permitted hereunder shall be as follows:

- a. If to Landlord: c/o City Clerk
455 N. Main, 13th Floor
Wichita, Kansas 67202
 - b. If to Tenant: _____

- With copy to: _____

Premises. The land described on Exhibit A attached hereto and incorporated herein by reference.

Term. The Term of the Lease shall be ninety-nine (99) years.

ARTICLE II

Granting Clause

Section 2.01. Demise. In consideration of the obligation of Tenant to pay all forms of rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises for the Term, all upon the terms and conditions set forth in this Lease, including the restriction that no existing building, nor any building which is constructed or placed upon the Premises, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling on the Premises.

Section 2.02. Demolition by Landlord. Landlord agrees to complete the demolition of existing improvements on the Premises. Such demolition shall be done in a workmanlike manner in compliance with all applicable laws, rules and regulations, and in such a manner as to cause no disruption to or interference with Tenant’s construction activities on the Premises or on adjacent property. Such demolition shall be completed on or before the Commencement Date with the site restored to a level grade, compacted, free of all debris, and in a condition acceptable to Tenant.

Section 2.03. Possession of Premises. Landlord shall deliver, and Tenant shall accept, possession of the Premises in the condition required in Section 2.02 above on the Commencement Date. Landlord represents and warrants that Tenant’s possession of the Premises shall be free of any claim of possessory rights by any person or entity except that of Landlord, Tenant or as created by any Approved Title Exception (defined below). Landlord shall have the right to access the property to maintain the adjacent Public Improvements after due notice to the Tenant, provided such maintenance shall not interfere with the conduct of Tenant’s business and provided that Landlord shall fully restore Tenant’s Premises.

ARTICLE III

Construction of Improvements

Tenant shall construct one or more buildings and related improvements on the Premises (“Tenant Improvements”). Tenant shall not construct on the Premises (i) any structures that are utilized as a “fast food” restaurant that includes a “drive-through” window, (ii) car lots for the sale and/or storage of new or used automobiles, (iii) massage parlors, (iv) escort services, (v) adult cinema, film, video, or toy stores, or (vi) any multi-game, casino-style gambling. Any such construction shall be at Tenant’s sole cost and expense, and shall be in accordance with all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements. Tenant shall have the right to demolish, rebuild, remodel, or alter such improvements at any time during the Term of this Lease in Tenant’s sole discretion, or to build additional improvements on the Premises, as long as such activities are carried out in compliance with all applicable laws, ordinances, and regulations. Until this Lease shall terminate as provided herein, Tenant shall own in fee simple all such improvements so constructed by Tenant and shall be entitled to all benefits of such ownership, including, without limitation, depreciation under applicable tax laws. Upon termination of this Lease for any reason, fee simple title to all such permanent improvements and fixtures, but not to trade fixtures and personal property, shall immediately vest in Landlord, and Tenant shall execute such deeds or other instruments reasonably required by Landlord to evidence such ownership of record.

ARTICLE IV

Recordable Documents

Section 4.01. Short Form Lease. Upon request of either party, the other shall execute a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Lease, except for the rental payable hereunder or other similar proprietary matters.

Section 4.02. Recordable Documents. Tenant shall have the right to execute and record against its interest in the Premises one or more documents containing covenants, conditions, restrictions, access agreements, use, maintenance, development or architectural control terms, terms related to any owners or occupants association, and any other document or agreement in Tenant’s sole discretion, provided that any such document expires as of the Expiration Date hereof, and that any such document cannot permit any property use or any discriminatory term that is prohibited by the Development Agreement (hereafter each a “Recordable Document”). Landlord consents and agrees that Tenant may record any Recordable Document without obtaining Landlord’s signature thereto, or other approval or consent, and hereby directs the Sedgwick County, Kansas, Register of Deeds to record any Recordable Document upon presentation to such office, provided such Recordable Document is otherwise in recordable form and the proper recording fee is submitted.

ARTICLE V

Rent

Section 5.01. Minimum Rent. Tenant shall pay Landlord a minimum fixed annual rent (“Minimum Rent”) of One Dollar (\$1) payable in advance on the Commencement Date in one (1) installment covering the Term of this Lease.

Section 5.02. Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, the Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of nonpayment of rent.

As Additional Annual Rent Tenant shall pay a sum equal to twenty-five percent (25%) of the Adjusted Net Cash Flow commencing with the first day the Tenant Improvements open for business. The Tenant shall calculate Adjusted Net Cash Flow for each Current Year within forty-five (45) days after the end of the Current Year (or portion thereof) and provide that calculation, and pay to the Landlord the Additional Annual Rent, within sixty (60) days after the end of the Current Year. Additional Annual Rent shall continue until this Lease expires. Adjusted Net Cash Flow is Gross Revenues less Total Expenses, less the total amount of capital expenses for furniture, fixtures, and equipment for the Tenant Improvements in excess of the aggregate amount expended from any reserve during such year.

The Tenant agrees to allow City Representative, after submission of the calculations of Additional Annual Rent for such year, to review and audit the Tenant’s books and records for compliance with the Tenant’s obligations hereunder. If an audit by the City reveals a material understatement of the amount due the City, then the Tenant shall pay all reasonable costs of such calculations required hereunder, the Tenant and City shall apply generally accepted accounting principles, consistently applied.

Section 5.03. Place of Payment. Minimum Rent, and all additional rent and other charges owed by Tenant to Landlord under the Lease, shall be payable by Tenant to Landlord at Landlord’s Notice Address set forth in Article I above or to any other place designated by written notice delivered by Landlord to Tenant at least ten (10) days prior to the date such amount is due to Landlord.

ARTICLE VI

Property Taxes

Section 6.01. Taxes. Tenant shall pay as additional rent during the Term and any extensions thereof, all ad valorem taxes, and all other governmental taxes or charges that may be levied against the Premises allocable to the Term (collectively “Taxes”). If not billed directly to Tenant, Landlord shall, after receipt of any tax bill or other notice of Taxes, promptly furnish Tenant with a copy thereof. Tenant shall issue its check payable to the applicable taxing

authority in the amount indicated and shall mail such check to the applicable taxing authority. If Landlord receives receipts from the taxing authority evidencing the payment thereof, Landlord will promptly mail copies of such receipts to Tenant. Taxes for the first and last years hereof shall be prorated. All personal property taxes shall be the responsibility of Tenant. Landlord shall not pass through to the Tenant or the Premises any cost for design and construction of the "Public Improvements" (as that term is defined in the Development Agreement).

Section 6.02. Payment by Landlord. If Tenant should fail to pay any Taxes required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects, pay such Taxes. Any sums so paid by Landlord shall be deemed to be additional rent owing by Tenant to Landlord and shall be due and payable upon demand as additional rent. Landlord may only step in and pay such Taxes on Tenant's behalf after Landlord has provided Tenant with written notice thereof and a reasonable time to pay such amounts. Provided, however, that if Tenant timely protests the imposition of any Taxes and diligently pursues the contest of any such assessment, then Landlord shall forebear any such payment until the protest is resolved or the taxing authority seeks to foreclose any tax lien.

ARTICLE VII

Condition of Premises, Mechanic's Liens, Liability Insurance

Section 7.01. Representations or Warranties. The Landlord warrants and represents to, and agrees with, the other Party as follows:

- a. It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- b. It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby.
- c. Neither the execution and delivery of this Agreement and the other documents contemplated herein will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- d. To the best of Landlord's knowledge, other than ground water pollution, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the Premises including, without limitation, the subsurface soils and groundwater, or which

have migrated to the Premises from another source, or have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the Premises by Landlord or any third -person, nor has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the Premises nor any notice that the Premises are not in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials (excluding such as may have been introduced during the Term by Tenant and any subtenants) are found on the Premises during the Term or any extension of the Term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the Premises to substantially the same condition as it was in immediately prior to such removal and remediation work. Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or regulatory agency regarding Hazardous Materials on the Premises and provide Tenant with a copy of the same within ten (10) days of Landlord's receipt thereof. This does not waive the limitation under the Kansas Tort Claims Act.

Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials located in, on or under the Premises as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the Premises by Tenant or any subtenant thereof during the Term.

Section 7.02. Mechanics' Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of Tenant, Tenant shall discharge the lien within forty (40) days after the filing of the lien, provided, however, that for so long as Tenant posts a bond and continues to diligently contest the amounts claimed due, it shall not be obligated to discharge said lien.

Section 7.03. Insurance Covering Tenant's Work. Tenant shall not make any improvements, alterations, repairs or installations, or perform any other work to the Premises unless prior to the commencement of the work Tenant shall obtain or cause its contractors to obtain (and during the performance of the work keep in force) public liability and worker's compensation insurance to cover every contractor to be employed. The policies shall be non-cancelable without ten (10) days' prior written notice to Landlord, and such insurance shall be carried with companies reasonably satisfactory to Landlord. Prior to the commencement of the work, Tenant shall deliver duplicate originals or certificates of the insurance policies to Landlord.

ARTICLE VIII

Repairs, Compliance, Surrender

Section 8.01. Repairs and Maintenance by Tenant. Tenant shall make all repairs to the Premises which Tenant concludes are necessary or desirable to keep the Premises in good order and repair.

Section 8.02. Compliance with Laws. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises, and otherwise comply with all applicable laws, ordinances and governmental regulations, and recorded restrictions and covenants. During the Term Landlord may not permit any additional restrictions, covenants or any other encumbrances to be placed on any portion of the Premises without Tenant's prior written consent, which consent may be granted or withheld by Tenant in Tenant's sole discretion. Tenant shall have no responsibility for the failure of any Sub-Tenant to comply with the provisions of this Section.

Section 8.03. Surrender of Premises. Upon the Expiration Date of this Lease, Tenant shall quit and surrender the Premises together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Premises. Upon surrender, Tenant may remove its personal property and trade fixtures.

ARTICLE IX

Services and Utilities

Tenant covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, and garbage removal and sewer in a timely manner as they may come due during the Term.

ARTICLE X

Mortgages on Tenant's Interest; Nondisturbance Agreements; Estoppel Certificates

Section 10.01. Right to Encumber. Landlord hereby grants to Tenant the right to mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed on the Premises (hereinafter in this Article X, each a "Leasehold Mortgage") without obtaining Landlord's consent. Landlord hereby agrees to subordinate its fee interest in the Premises to one or more mortgagees taking a Leasehold Mortgage (hereinafter in this Article X, a "Leasehold Mortgagee") provided that the proceeds of and loan secured by such Leasehold Mortgage are used for any costs associated with the development and construction of improvements by Tenant on the Premises, and further provided that such subordination of Landlord's fee interest shall only be for the Term and such Leasehold Mortgagee's rights in the fee interest upon any foreclosure shall expire at the end of the Term. Landlord agrees to sign the subordination agreement in the form attached hereto and incorporated by reference herein as Exhibit B. If during the Term a Leasehold Mortgagee forecloses on, or requires an assignment in

lieu of, its Leasehold Mortgage, Landlord, unless it shall timely exercise its right to cure defaults under the Leasehold Mortgage, agrees to execute and deliver upon request an assignment in the form of Exhibit C attached hereto and incorporated by reference herein, the term of years actually recited in such deed to expire simultaneously with the Expiration Date of the Lease Term.

Landlord further acknowledges and agrees that Tenant may assign, sublet or otherwise convey all or a portion of Tenant's interest in the Premises and under this Lease (any such assignee, subtenant or conveyance grantee hereinafter in this Article X referred to as an "Assignee"), and that any Assignee may, without obtaining Landlord's consent, mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber such Assignee's interest in this Lease, and such Assignee's interest in the Premises and any improvements thereto (hereinafter in this Article X each an "Assignee Mortgage," each mortgagee or secured party under an Assignee Mortgage hereinafter an "Assignee Mortgagee," each Leasehold Mortgage and Assignee Mortgage a "Mortgage," each Leasehold Mortgagee and Assignee Mortgagee a "Mortgagee," and each Assignee and Mortgagee a "Lease Interest Holder"). Landlord agrees that any Mortgage or evidence thereof may be recorded against the Mortgagee's interest in the Premises in the Sedgwick County, Kansas, public real property records.

Section 10.02. Cure by Lease Interest Holder. Landlord shall give to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest in the Premises and provided Landlord with a notice address, simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant and no such notice to Tenant shall be effective unless a copy is so served upon each such Lease Interest Holder. Each Lease Interest Holder shall have the right, but not the obligation, to cure any default by Tenant hereunder, by completing such cure at any time within sixty (60) days following the expiration of the cure period otherwise applicable to Tenant, or, if said default is of a nature that it may not reasonably be cured within the applicable cure period, then if a Lease Interest Holder commences to cure during the applicable cure period, provides Landlord with notice of such commencement, and proceeds with such cure diligently and with reasonable dispatch, and Landlord shall accept performance by or at the instance of such Lease Interest Holder as if the same had been made by Tenant.

Section 10.03. Foreclosure of Mortgage. A Leasehold Mortgagee may become the legal owner and holder of the interest of Tenant under this Lease, including, without limitation, the interest of Tenant in all improvements erected by Tenant on the Premises, by foreclosure or by an assignment of this Lease in lieu of foreclosure, without Landlord's consent. In such event, such Leasehold Mortgagee shall have the right thereafter to assign this Lease without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease. Additionally, any Assignee Mortgagee may become the legal owner and holder of the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, by foreclosure or by an assignment of such Assignee's interest in lieu of foreclosure, without Landlord's consent. In such event, such Assignee Mortgagee shall have the right thereafter to assign the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease.

Section 10.04. Nondisturbance Agreement Regarding Leasehold Mortgagee. In the event of any early termination by Landlord of this Lease due to a Tenant default prior to the ordinary expiration of the Term, Landlord shall (A) within five (5) days after such Expiration Date provide to any Leasehold Mortgagee notice of such early termination along with a statement of any and all sums that would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord, and (B) within twenty (20) days after such termination date provide notice of such early termination to any other Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address. Said Leasehold Mortgagee shall then have an option to obtain a new lease upon the same terms and conditions set forth in this Lease. This option must be exercised by written notice to Landlord given within thirty (30) days from the date said Leasehold Mortgagee receives the Landlord's notice and statement. The new lease shall require said Leasehold Mortgagee to cure all monetary defaults of Tenant under this Lease. Any non-monetary default of Tenant shall be waived by Landlord, provided the Leasehold Mortgagee proceeds with reasonable promptness to obtain possession, continues diligently to attempt to cure the default, and satisfies Tenant's other obligations under this Lease. Within twenty (20) days of entering into such a new lease, Landlord shall provide written notice of such new lease to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address.

Section 10.05. Nondisturbance Agreement Regarding Assignee or Assignee Mortgagee. Conditional upon the terms of Section 10.06 below, Landlord grants the following nondisturbance rights to each Assignee and each Assignee Mortgagee. So long as neither an Assignee's possessory right in and to the Premises nor such lease, sublease, assignment or other instrument of conveyance (hereinafter in this Article X each an "Assignment") creating such Assignee's right has been terminated due to a breach or default of the Assignment by such Assignee, Landlord covenants to not diminish, disturb or interfere with those possessory rights or such other rights of such Assignee (and any Assignee Mortgagee or other successor-in-interest of such Assignee) pursuant to such Assignment, except as may be permitted under the terms of such Assignment.

Section 10.06. Conditions Precedent to Landlord Nondisturbance Obligation. Landlord's obligations and covenants pursuant to Section 10.05 above are expressly conditional and contingent upon the benefiting Assignee or Assignee Mortgagee accepting and agreeing to the following terms:

- a. Attornment. Such Assignee/Assignee Mortgagee agrees that in the event of the termination, cancellation or expiration of its respective Assignment for any reason whatsoever, such Assignee's/Assignee Mortgagee's interest in and to the Premises shall be subject to this Lease, such Assignee/Assignee Mortgagee will attorn to Landlord for the unexpired term of the Assignment, subject to all of the terms and conditions of the Assignment, except as hereinafter provided, and such attornment shall be effective and self-operative without the execution of any further instrument on the part of Landlord or such Assignee/Assignee Mortgagee, and Landlord will accept such attornment. Upon request of either Landlord or such Assignee/Assignee Mortgagee, the other party shall execute and deliver a new assignment containing the same terms and conditions as contained in the Assignment (including all right of renewal and extension), for the

remaining term thereof, except that Landlord shall be permitted to make any necessary modification to provide that any Landlord obligations arising thereafter shall be limited to the extent that adequate funds may be available for the performance thereof from rents received on the Premises. Landlord shall not be: (i) responsible or liable for any monetary damages as a result of, or obligated to cure, any defaults by the lessor, sublessor, assignor or other grantor to Assignee under Assignee's respective Assignment (hereinafter in this Article X each an "Assignor") under the Assignment provided that the foregoing shall not be deemed to relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises; (ii) subject to claims, defenses or offsets under the Assignment or against Assignor which arose or existed prior to the time Landlord obtains possession of Assignor's interest in the Premises provided that the foregoing shall not be deemed to (A) relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises, or (B) modify or waive any rights of self-help, set-off, abatement or termination expressly provided in the Assignment; (iii) bound by any rent paid more than thirty (30) days in advance; (iv) liable for the return of any security deposit paid to any prior party, including Assignor, unless Landlord has actually received the same; or (v) bound by any amendment or modification of the Assignment made without its prior written consent (Landlord agrees not to unreasonably condition, withhold or delay its consent to any proposed amendment or modification which does not materially and adversely affect Landlord's interest). Nothing in this Section 10.06 shall be deemed a waiver of any rights or remedies that such Assignee/Assignee Mortgagee may possess or claim personally against Assignor for any defaults or acts of Assignor.

b. Right To Cure Landlord's Default. Notwithstanding any provisions of the Assignment to the contrary, no notice of cancellation of the Assignment by such Assignee/Assignee Mortgagee shall be effective unless Landlord shall have first received notice of the default giving rise to such cancellation and shall have failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to Landlord, at Landlord's notice address set forth in this Lease, copies of any statement, notice, claim or demand given or made by such Assignee/Assignee Mortgagee to Assignor, in all cases by the same method as the statement, notice, claim or demand was given or made to Assignor.

Landlord may request an Assignee or Assignee Mortgagee to execute a separate agreement specifically accepting or rejecting the terms of this Section 10.06.a. and 10.06.b., and if such Assignee or Assignee Mortgagee does not execute and return such agreement accepting such terms to Landlord within thirty (30) days of delivery to such Assignee/Assignee Mortgagee, such failure shall be deemed conclusive evidence that Landlord's obligations and covenants pursuant to Section 10.05 above shall not run to the benefit of such Assignee/Assignee Mortgagee.

Section 10.07. Estoppel Certificates. Landlord agrees that the City Representative shall execute and deliver to Tenant, any Assignee and any Mortgagee an estoppel certificate in the form attached hereto as Exhibit D. If Tenant, any Assignee or any Mortgagee delivers such a certificate to the City Representative for execution and the City Representative fails to complete (modified as necessary to make it true and correct), execute and return such certificate within twenty (20) days of the City Representative's receipt of the same, the statements made in the certificate provided to the City Representative shall be deemed true and Landlord agrees that such statements may be relied upon by such requesting party and that party's respective successors, assigns, lenders and title insurers. Additionally, Landlord agrees that in response to an open records request from Tenant, any Assignee or any Mortgagee for information related to this Lease, Landlord will respond as required under all applicable laws at such time, and in the event that the open records laws are repealed, Landlord agrees to provide such requested information anyway as is required by the Kansas Open Records Act in effect as of July 1, 2006.

ARTICLE XI

Destruction and Insurance

Section 11.01. Insurance. Tenant agrees, at Tenant's cost and expense, to obtain and keep in force and effect during the life of this Lease and any extensions thereof, in the names of Landlord and Tenant, general liability insurance against any and all claims for personal injury or property damage occurring in or upon the Premises during the Term of this Lease. Such insurance shall be maintained with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) for injuries to any number of persons in any one accident or occurrence; and, Five Hundred Thousand Dollars (\$500,000) for damage to property in any one accident or occurrence. Tenant shall furnish to Landlord at Landlord's written request reasonable evidence of Tenant's compliance with the provisions of this paragraph, such as certificates of insurance. Tenant further agrees that Tenant shall be solely responsible for procuring and maintaining casualty insurance on the improvements constructed by Tenant on the Premises.

Section 11.02. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees to the extent such loss is covered by a policy of insurance. Landlord and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers, in amounts and to the extent Tenant deems reasonable and necessary.

ARTICLE XII

Condemnation

Section 12.01. Termination of Lease. If Landlord's fee simple title to the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein the "Taking"), then this Lease shall terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Premises as to render the remainder thereof substantially unusable for the purposes for which the Premises were leased, then Tenant shall have the right to terminate this Lease on thirty (30) days' notice to the other given within ninety (90) days before the estimated date of possession being given to the condemning authority. In the event of a partial taking and the remainder of the Premises are usable, rent shall be reduced in proportion to the amount of square footage condemned.

Section 12.02. Compensation. All compensation awarded or paid upon a total or partial Taking of the Premises shall be distributed pro rata to Landlord for the value of the real estate and to Tenant for the Tenant Improvements.

Section 12.03. Taking for Temporary Use. If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

ARTICLE XIII

Indemnity and Liability

Section 13.01. Indemnity.

a. As used in Article XIII, "Claims" means any claims, suits, proceedings, actions, causes of action, mechanics or materialman's liens, responsibility, liability, demands, judgments, and executions.

b. Tenant hereby indemnifies and agrees to save harmless Landlord from and against all Claims, which (i) arise from any work performed by Tenant on the Premises; (ii) arise from or are in connection with Tenant's possession, use, occupation, management, repair, maintenance or control of the Premises or any portion thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant's Agents; (iv) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (v) result from injury to person or property or loss of life sustained in or about the Premises during the Term except to the extent arising out of any negligence or willful misconduct of Landlord.

c. Landlord hereby indemnifies and agrees to save Tenant harmless from and against all claims which (i) arise from or are in connection with any act or omission of Landlord; (ii) result from any default, breach, violation or nonperformance of this Lease

or any provision of this Lease by Landlord; or (iii) result from injury to person or property or loss of life sustained in or about the Premises to the extent arising out of any negligence or willful misconduct of Landlord. Provided, however, that in any case where the claims are of a nature such that the Landlord's liability would be limited by limitations or immunities under the Kansas Tort Claims Act if the claims were brought directly against Landlord, Landlord's liability under this subsection c. shall be subject to the same limitations and immunities.

d. Indemnitor shall defend any Claims against Indemnitee with respect to the foregoing at Indemnitor's sole cost and with counsel reasonably satisfactory to Indemnitee. Indemnitor shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Indemnitee in connection with any Claims.

e. This Section 13.01 shall expressly survive the termination or expiration of this Lease.

Section 13.02. Liability Insurance.

a. Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises as set forth in Section 11.01 hereof. Landlord, and any designee of Landlord shall be named as additional insureds. The liability insurance policy shall protect Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenance of the Premises as required in Section 11.01, or which arises from any of the Claims described in Section 13.01 against which Tenant is required to indemnify Landlord.

b. The policy shall be written by an insurance company reasonably satisfactory to Landlord with coverage limits reasonably satisfactory to Landlord.

Section 13.03. Inability to Perform.

a. If Landlord fails to perform any of its obligations under this Lease as a result of Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; delays caused by Tenant; and causes beyond the reasonable control of Landlord (a "Force Majeure"), Landlord shall not be liable for loss or damage for the failure, and Tenant shall not be released from any of its obligations under this Lease.

b. If Landlord is delayed or prevented from performing any of its obligations as a result of a Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

ARTICLE XIV

Covenant of Quiet Enjoyment

Landlord covenants, represents and warrants that it has good and marketable fee simple title to the Premises free and clear of all liens, assessments, leases, taxes and other encumbrances except those title exceptions specifically approved by Tenant in writing (“Approved Title Exceptions”). Landlord covenants that Landlord has the authority to lease the Premises to Tenant, and if Tenant pays the rent and all other charges provided for in this Lease, performs all of its obligations provided for under this Lease, and observes all of the other provisions of this Lease, Tenant shall peaceably and quietly enjoy the Premises in accordance with the terms of this Lease without any interruption or disturbance from Landlord.

ARTICLE XV

Default

Section 15.01. Events of Default. Each of the following events shall be a default hereunder by Tenant and a breach of this Lease:

- a. If Tenant shall be dissolved, or shall make an assignment for the benefit of creditors;
- b. If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;
- c. If Tenant shall fail to pay Landlord any Minimum Rent or additional rent within thirty (30) days after receipt of written notice from Landlord that the same are due and payable; or
- d. If Tenant shall breach or fail to perform any of the agreements, terms, covenants, or conditions hereof on Tenant’s part to be performed other than the payment of Minimum Rent or additional rent, and such nonperformance shall continue for a period of thirty (30) days after receipt of written notice thereof by Landlord to Tenant (provided, however, that Tenant shall not be in default hereunder if Tenant shall, within such thirty (30) day cure period, commence and at all times thereafter diligently pursue all practicable efforts to cure the default).

If any such default shall occur and shall not be cured within the applicable cure period, if any, Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Lease and the Term hereof, as well as all of the right, title, and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, as if the expiration of the time fixed in such notice of cancellation and termination

were the end of the Term. Upon the Expiration Date the Lease shall be deemed null, void and of no force and effect, and both parties shall be relieved of any further obligation to the other under the terms of the Lease. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.02. Landlord's Right to Cure. Upon any uncured default, Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by Landlord shall be deemed to be additional rent hereunder payable by Tenant and collectible as such by Landlord with the next succeeding monthly installment of rent. Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied, but neither any such expenditure, nor any such performance, by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.03. Landlord Default; Tenant Remedies. If Landlord fails to pay any amount due under the Lease, or shall breach or fail to perform any other agreement, term, covenant or condition of the Lease, and such failure shall continue for a period of thirty (30) days after Landlord's receipt of written notice from Tenant of such failure, Landlord shall be in default and in breach of this Lease. In the event of a Landlord default, Tenant shall have the right, but not the obligation, to cancel and terminate this Lease immediately by providing Landlord with written notice of such termination, and upon such Expiration Date, the Lease shall be deemed null, void and of no force and effect, and that both parties shall be relieved of performing any further obligation under the terms of the Lease, but shall not be relieved of liability for any additional remedy available to Tenant. In the event of a Landlord default, Tenant shall also have the right, but not the obligation, to pursue any other remedy available to Tenant at law or in equity, including but not limited to specific performance, offset, deduction and abatement. Tenant's remedies under this Section 15.03 shall be cumulative and not mutually exclusive.

ARTICLE XVI

Interpretation, Notices, Miscellaneous

Section 16.01. Interpretation.

a. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

b. The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

c. This Lease may be executed in several counterparts; but the counterparts shall constitute but one and the same instrument.

d. This agreement shall be interpreted in accordance with the internal laws of the State of Kansas without giving effect to conflict of laws principles.

e. This Lease shall not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.

Section 16.02. No Oral Changes. This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or terminated orally.

Section 16.03. Communications. No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, postage prepaid, addressed as follows:

a. If intended for Landlord, a written communication shall be effective if mailed to the address designated as Landlord's Notice Address in Article I or to such other address as Landlord designates by giving notice to Tenant; and

b. If intended for Tenant, a written communication shall be effective if mailed to the address designated as Tenant's Notice Address in Article I or to such other address as Tenant shall designate by giving notice thereof to Landlord.

Section 16.04. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

Section 16.05. Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Lease is of the essence of this Lease.

Section 16.06. Assignment; Sublease. Tenant may freely assign or sublease all or any portion of the Premises without Landlord's consent. To the extent Tenant assigns any portion of the Premises or its interest in this Lease, Tenant may request Landlord's consent that as of the date of such assignment, the assignor shall be relieved of all its obligations pursuant to this Lease arising on and after the date of such assignment, and such assignment shall act as a novation of such obligations of the assignor, and Landlord agrees to not unreasonably withhold, condition or delay such consent. Landlord shall be obligated to provide such consent if both: (1) the proposed assignee expressly assumes and agrees to perform all of the obligations of Tenant under this Lease arising as of the date of such assignment, and (2) Tenant furnishes the City with evidence in the form of financial statements, accompanied by the certificate of an independent certified public accountant, or other evidence satisfactory to the City, establishing that the net worth of

such proposed assignee immediately following such assignment will be at least equal to the net worth of Tenant as shown by the most recent financial statement of Tenant.

Section 16.07. Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of the Lease.

Section 16.08. Other Definitions. For purposes of this Lease, the following definitions shall be applicable to the various provisions of this Lease:

“Gross Revenues” means all revenues, business interruption insurance proceeds, receipts and income of any kind derived directly or indirectly by the Tenant from or in connection with the Tenant Improvements (including rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts), whether on a cash basis or credit, paid or collected, determined in accordance with sound accounting principles, excluding, however: (i) funds furnished by the Tenant, (ii) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (iii) gratuities, (iv) proceeds of insurance and condemnation (except as stated above or expressly provided elsewhere), and (v) sale or disposition proceeds of the Tenant or the Tenant Improvements. Nothing herein shall be construed to include in this definition of “Gross Revenues” any revenues, receipts, or income of any kind from the operation of any business conducted in or on the Tenant Improvements.

“Total Expenses” means all expenses reasonably incurred by the Tenant or Manager in the operation and maintenance of the Tenant Improvements as determined in accordance with sound accounting principles, including but not limited to:

- salaries and employee expense and taxes (including reasonable salaries, wages, bonuses and other compensation of all employees of the Tenant and their social benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits);
- expenditures for ordinary and non-structural repairs and maintenance necessary to maintain the Tenant Improvements in good operating condition;
- expenditures for operational supplies, utilities, insurance, governmental fees and assessments;
- the cost of inventories and fixed asset supplies, and license fees;
- franchise fees and other fees, expenses, and charges under a franchise agreement, if any;
- expenditures for advertising and marketing;
- federal, state and municipal excise, sales and use taxes, except those collected directly from guests and patrons or as part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments;

- amounts paid into any capital, furniture, fixture, equipment or other reserve, excluding, however, insurance proceeds and condemnation awards;
- fees paid to the Manager;
- ad valorem taxes and personal property taxes and special assessments to be paid by the Tenant;
- the cost of insurance to be provided by the Tenant;
- amounts paid for operating and capital leases for furniture and equipment;
- payments of debt service to the Leasehold Mortgage or other creditors and other loans to the Tenant;
- Tenant Development Cost Return, defined as, on an annual basis, twenty percent (20%) of the total Construction Costs paid by Tenant, Developer, or permitted assignees and sublessees.

Excluding, however: (i) capital expenditures by the Tenant, (ii) amortization expense, (iii) depreciation expense.

No part of Manager’s central office overhead or general or administrative expense (as compared to that of the Tenant Improvements) shall be deemed to be a part of Total Expenses. Out-of-pocket expenses of Manager incurred for the account of or in connection with the Tenant Improvements operations, including reasonable travel expenses of employees, officers and other representatives and consultants of Manager and its affiliates, shall be deemed to be a part of Total Expenses and such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this WaterWalk Ground Lease No. _____ instrument the date first above written.

CITY OF WICHITA, KANSAS

WICHITA AREA ASSOCIATION OF REALTORS

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

“Landlord”

“Tenant”

Attest:

Printed Name: _____
Title: City Clerk

Approved As To Form:

Printed Name: _____
Title: City Attorney

EXHIBIT A to EXHIBIT C

Premises

[insert legal yet]

EXHIBIT B to EXHIBIT C
Form of
SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (“Subordination Agreement”) made as of the _____ day of _____, 2_____, by and among [insert name and address of applicable Leasehold Mortgagee] (“Lender”), [insert name and address of Tenant] (“Tenant”), and [insert name and address of Landlord] (“Landlord”).

W I T N E S S E T H:

WHEREAS, pursuant to that certain WaterWalk Ground Lease dated as of _____, 20____ (together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the “Lease”), with respect to the real property legally described in the Lease (the “Demised Premises”), Tenant leases the Demised Premises;

WHEREAS, Lender has made, or may agree to make, a loan to Tenant (the “Loan”) conditioned on, among other conditions, the full execution of this Subordination Agreement;

WHEREAS, the Loan will or may be secured by, among other things, a mortgage, assignment of the Lease and rents, and/or a security agreement (collectively the “Mortgage”) made by Tenant to or for the benefit of Lender covering, among other things, Tenant’s interest under this Lease, and Tenant’s right, title and interest in and to the improvements constructed on the Demised Premises;

WHEREAS, the parties hereto desire to make the Landlord’s fee interest in the Demised Premises subject and subordinate to the Mortgage, pursuant to the terms hereof.

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

1. Provided that the Loan proceeds are used for any costs associated with the development and construction of improvements by Tenant on the Demised Premises, the Landlord’s fee interest in the Demised Premises, and any right, title and interest of Landlord in and to the improvements thereon, are and shall be subject and subordinate to the Mortgage and the lien thereof, to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, but only until the “Expiration Date” of the “Term” of the Lease (as those terms are defined under the Lease); provided, however, and Lender agrees, that in the event of any act, omission or default by Tenant that would give Lender the right, either immediately or after the lapse of a period of time, to declare a default or breach under the Mortgage and elect one or more remedies, including but not limited to foreclosure of the Mortgage, Lender will not exercise any such right until it has given

written notice of such act, omission or default to Landlord and provided Landlord the right to cure for any applicable cure period set forth in the Mortgage.

2. The terms and provisions of Article X of the Lease are incorporated by reference herein for the purpose of the parties confirming to each other that each shall have the rights and obligations set forth in said Article X of Landlord as “Landlord” thereunder, Tenant as “Tenant” thereunder, and Lender as “Leasehold Mortgagee” thereunder, as if Lender was an actual party to the Lease.

3. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Subordination Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender: [insert notice address]

with a copy concurrently to: [insert notice address]

To Tenant: [insert notice address]

with a copy concurrently to: [insert notice address]

To Landlord: [insert notice address]

with a copy concurrently to: [insert notice address]

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such notice is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent.

4. This Subordination Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Kansas.

5. A fully-executed original of this Subordination Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against the WAAR Tract by either party hereto (or their successors and assigns).

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

“Lender”

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2____, by
_____, as _____ of _____.

Notary Public

My Appointment Expires: _____

EXHIBIT C to EXHIBIT C
GENERAL WARRANTY DEED

THIS INDENTURE is made this ____ day of _____, 20__, by and between The City of Wichita, a corporate body politic and political subdivision of the State of Kansas (“Grantor”), and _____, whose respective interest is identified below (“Grantee”).

W I T N E S S E T H: That;

Grantor, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby distribute, grant, sell and convey all the following described real estate, situated in the County of Sedgwick and State of Kansas:

[INSERT LEGAL DESCRIPTION]

to Grantee for a term of ____ years. Grantee, subject to easements and other restrictions and reservations of record, shall have all right, title and interest, including the right to control the use of such real estate, the right to all rents, issues and profits therefrom, and the full power and authority to execute lease agreements for the lease or rental of such real estate, for such terms and upon such conditions as Grantee, in its uncontrolled and absolute discretion, shall determine to be in the best interests of the term-of-years estate, without the necessity of the Grantor, as the remainder person, joining therein. At and upon the expiration of the term-of-years estate, the real estate shall revert outright back to the Grantor and its assigns forever.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, and appurtenances hereunto belonging or in anywise appertaining forever.

And Grantor for itself and for its successors and assigns does hereby covenant, promise, and agree to and with Grantee, that at the delivery of these presents it is lawfully seized, of an absolute and indefeasible state of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of whatsoever nature and kind, except as stated above, and that Grantor will warrant and forever defend the same unto Grantee, its successors or assigns, against Grantor, its successors and assigns, and all and every person or persons whomsoever lawfully claiming or to claim the same.

The City of Wichita

By: _____
Name: _____
Its: _____

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, on behalf of the City of Wichita for the uses and purposes contained therein.

Notary Public

My Appointment Expires:

EXHIBIT D to EXHIBIT C

**Form of
LESSOR ESTOPPEL CERTIFICATE**

The City of Wichita, Kansas, a Kansas municipality (“Ground Lessor”), and Wichita Area Association of REALTORS, a Kansas corporation (“Ground Lessee”), executed that certain WaterWalk Ground Lease dated as of _____, 20__ (such Lease together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the “Ground Lease”), with respect to the real property legally described in the Ground Lease (the “Land”).

[insert paragraph describing who is requesting the estoppel certificate and why]

Ground Lessor hereby certifies, acknowledges and agrees as follows [to the extent any of the following statements are not true, Ground Lessor will revise such statement, providing specific information as to why the statement is not true]:

1. The Ground Lease is in full force and effect and is valid and enforceable against Ground Lessor, and in any event, Ground Lessor acknowledges and agrees that it will not assert that either (a) a Ground Lessee default under the Ground Lease has occurred prior to the Effective Date, or (b) prior to the Effective Date an event occurred or condition existed which, with the giving of notice or the lapse of time or both, would constitute a default of Ground Lessee under the Ground Lease.

2. Ground Lessor agrees to send to _____ all notices to which _____ is entitled pursuant to Article X of the Ground Lease, at the following address:

_____.

3. Ground Lessor acknowledges that it is executing and delivering this Certificate for the benefit of _____, any persons or entities acquiring all or any portion of _____’s interest in the _____, and each of their respective lenders, and any title insurance company providing title insurance to any of such persons, entities, or lenders, together with each of their respective successors and assigns, knowing that each of such persons and entities will rely upon the contents hereof.

Dated as of _____, _____.

CITY OF WICHITA, KANSAS

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of the City of Wichita, a Kansas municipality, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____

EXHIBIT D

SHARED FOOTING AGREEMENT

THIS SHARED FOOTING AGREEMENT (the "Agreement") is made and entered into effective _____, 20__, by and between by and between Wichita Area Association of REALTORS ("WAAR") and WaterWalk, LLC ("WaterWalk").

RECITALS:

- A. WAAR leases the tract of land described on Exhibit A attached hereto ("WAAR Tract").
- B. WaterWalk may lease all or a portion of the land adjacent to the North boundary of the WAAR Tract (such adjacent land hereafter the "WaterWalk Tract," and the WAAR Tract and/or the WaterWalk Tract or any portion thereof sometimes hereafter a "Tract").
- C. The WAAR Tract and the WaterWalk Tract are adjacent to each other, and the parties agree that the structures built upon both tracts may share a foundation footing and wall cap at their shared boundary line.
- D. WaterWalk and WAAR desire to provide for the installation and use by each party and its successors and assigns of such shared footing and wall cap, and to evidence their agreement with respect thereto upon the land records of Sedgwick County, Kansas.

NOW, THEREFORE, in consideration of the sum of Ten Dollars and other valuable consideration, the parties agree as follows:

- 1. WAAR hereby agrees that at the time it installs the footing and foundation for the building to be constructed upon the WAAR Tract, WAAR will cause a shared footing to be constructed and located upon and between the North boundary of the WAAR Tract and the South boundary of the WaterWalk Tract, as more specifically set forth on Exhibit B attached hereto. WAAR covenants to complete such work at the same time WAAR installs the other footings and foundation for the building to be constructed upon the WAAR Tract. Upon completion by WAAR of such shared footing pursuant to the specifications set forth in Exhibit B hereto, WAAR shall provide WaterWalk with detailed documentation of the actual costs incurred to install the shared footing, along with documentation sufficient to evidence that all contractors and suppliers have been paid in full related to such shared footing and that none have any mechanic's, materialmen's or similar lien claims that may be filed against the WaterWalk Tract, and WaterWalk shall reimburse WAAR for one-half of such actual costs within 30 days of receipt by WaterWalk of such documentation.
- 2. Upon WaterWalk's payment of one-half of the cost of construction of the shared footing as provided herein, WAAR agrees to indemnify and hold harmless WaterWalk and the City from and against any liability, costs, damages and expenses, including reasonable attorneys

fees and appeal costs and fees, incurred due to or arising out of any lien claim asserted against the WaterWalk Tract related to construction and installation of the shared footing.

3. WAAR and WaterWalk further agree that, if required by either party, upon completion of both the North wall of the building upon the WAAR Tract and the South wall of the building upon the WaterWalk Tract, regardless of whether said walls are immediately adjacent to each other or separated by some space, a continuous roof cap over these walls shall be constructed, installed and maintained. The material and other specifications of such roof cap shall be agreed upon by the parties, and all costs shall be paid by the party requiring the same, unless otherwise agreed to by the parties at such time.

4. Neither party hereto shall alter, change or damage the shared footing or the roof cap without the prior written consent of the other. Any damage to the shared footing or the roof cap resulting from a party's violation of this Agreement shall be repaired promptly and fully at the sole cost and expense of such party.

5. This Agreement shall remain in force and effect for a term of fifteen (15) years and so long thereafter as the shared footing or roof cap is used by the buildings on both the WAAR Tract and the WaterWalk Tract.

6. If after 15 days' prior written notice either party shall neglect or refuse to perform any of its obligations pursuant to this Agreement, the other party may pursue any remedy available at law or in equity. A party may seek cumulative remedies, and failure of a party to insist upon a strict performance of any of the terms, covenants, and conditions hereof shall not be deemed a waiver of any rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, and conditions. If a party in good faith files a lawsuit to enforce or interpret the terms of this Agreement, the prevailing party in such litigation may be awarded compensation from the other party for its reasonable costs of such lawsuit, including but not limited to court costs, attorneys fees, and appellate costs and attorney fees related thereto.

7. This Agreement shall constitute a covenant running with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors and assigns, and any present or future owner or tenant of a Tract.

8. This Agreement may be changed only by a written amendment executed by both parties hereto (or their successors or assignees).

9. Nothing in this Agreement shall be deemed or construed to create a relationship of principal and agent, partnership, or joint venture between the parties.

10. This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both parties. This Agreement, with all amendments and attachments hereto, contains the entire agreement of the parties regarding the subject matter hereof. The invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. Section headings in this Agreement are for convenience only and shall not be used in interpreting its provisions. This Agreement shall be interpreted in accordance with the laws of the state of Kansas.

11. All notices required or allowed in this Agreement shall be in writing and shall be sent to the following addresses, or such other address as may be provided by one party giving notice to the other party of such change:

To WAAR: Attn: President
 Wichita Area Association of REALTORS
 540 S Broadway
 Wichita, KS 67202

To WaterWalk: Attn: Tom Johnson
 WaterWalk, LLC
 230 N. Mosley, Ste. E
 Wichita, KS 67202

Notice may be delivered by personal delivery, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

12. Reference to days in this Agreement means consecutive calendar days including weekends and holidays. The time for performance of any obligation or the satisfaction of any contingency under this Agreement shall be extended for the period during which a party is prevented from performing by the act or omission of the other party, acts of God, government, or other force or event beyond the reasonable control of such party.

13. Each party agrees to indemnify and hold harmless the other for, against and from any costs, damages and expenses, including reasonable attorneys' fees and appeal costs and fees, incurred to defend against third-party claims arising from the failure of the indemnifying party to perform its obligations under this Agreement. A party entitled to indemnity shall promptly notify the indemnifying party of its claim for indemnity. The indemnifying party shall have the right to defend, prosecute and settle the matter for which indemnity is sought, using counsel reasonably satisfactory to the indemnified party and its insurer.

14. The time of the performance of all of the covenants, conditions and agreements of this Agreement is of the essence of this Agreement.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which taken together shall constitute one and the same instrument regardless of whether all parties have executed the same counterparts.

16. A fully-executed original of this Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against WaterWalk Tract and/or the WAAR Tract by either WaterWalk or WAAR (or their successors and assigns).

WATERWALK LLC

WICHITA AREA ASSOCIATION OF REALTORS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

“Waterwalk”

“WAAR”

CONSENT

The City of Wichita, a Kansas municipality, as the fee title owner of the WAAR Tract and the WaterWalk Tract, hereby consents to the execution of the foregoing Shared Footing Agreement, and recordation of the same with the Sedgwick County, Kansas, Register of Deeds.

CITY OF WICHITA, KANSAS

By: _____
Name: _____
Title: _____
Date: _____

Attest: _____

Name: _____
Title: _____
Date: _____

ACKNOWLEDGMENTS

STATE OF _____)
) ss:
_____ COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 200__, before me, a Notary Public within and for the County and State aforesaid, came _____, _____ of _____, who is personally known to me and known to me to be the same person who executed the foregoing Shared Footing Agreement, and said person duly acknowledged before me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at _____(city), _____(state), on the date first above written.

Notary Public

My Appointment Expires:

STATE OF _____)
) ss:
_____ COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 200__, before me, a Notary Public within and for the County and State aforesaid, came _____, _____ of _____, who is personally known to me and known to me to be the same person who executed the foregoing Shared Footing Agreement, and said person duly acknowledged before me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at _____(city), _____(state), on the date first above written.

Notary Public

My Appointment Expires:

STATE OF _____)
) ss:
_____ COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 200__, before me, a Notary Public within and for the County and State aforesaid, came _____, _____ of _____, who is personally known to me and known to me to be the same person who executed the foregoing Consent to the foregoing Shared Footing Agreement, and said person duly acknowledged before me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at _____ (city), _____ (state), on the date first above written.

Notary Public

My Appointment Expires:

EXHIBIT A to EXHIBIT D

WAAR Tract

[insert WAAR Tract description]

EXHIBIT B to EXHIBIT D

Shared Footing Specifications

[to be inserted prior to expiration of the Due Diligence Period]

EXHIBIT E

AGREEMENT REGARDING MONUMENT SIGN RIGHTS

THIS AGREEMENT REGARDING MONUMENT SIGN RIGHTS (the “Agreement”) is made and entered into effective _____, 20__, by and between by and between Wichita Area Association of REALTORS (“WAAR”) and WaterWalk, LLC (“WaterWalk”).

RECITALS:

A. WAAR and WaterWalk desire that WAAR lease the tract of land described on Exhibit A attached hereto (“WAAR Tract”);

B. The WAAR Tract is subject to the First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Wichita WaterWalk, as may be amended from time to time (“Declaration”);

C. The WaterWalk development includes a monument sign located at the intersection of Main Street and Dewey Street, Wichita Kansas (“Sign”), which Sign is located there pursuant to the terms of a Monument Sign Easement granted from the City of Wichita (“City”) to WaterWalk, dated _____ (“Easement”);

D. As partial consideration for WAAR to enter into a lease of the WAAR Tract, WaterWalk agrees to certain limitations on the charges assessed against the WAAR Tract pursuant to the Declaration, and further agrees to certain signage rights to the Sign benefiting the WAAR Tract, all as more specifically set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars and other valuable consideration, the parties agree as follows:

1. WaterWalk hereby agrees that, subject to the terms and limitations of the Easement, WAAR shall have the right to have Landlord install (at WAAR’s expense) and maintain one signage slot on the Sign consistent with the size of the existing Gander Mountain signage slot on the Sign, in a position on the Sign to be agreed upon by WAAR and WaterWalk, displaying such lettering and image as requested by WAAR from time to time (at WAAR’s expense) and which WaterWalk may approve. WaterWalk will maintain, repair, replace and operate the Sign, and the costs thereof shall be allocated, pursuant to the terms of the Declaration.

2. This Agreement and the rights granted to WAAR hereunder shall remain in force and effect for the term of the lease of the WAAR Tract by WAAR from the City or so long as WAAR or any mortgagee, sublessee or other assignee has rights in the WAAR Tract.

3. If after 15 days’ prior written notice either party shall neglect or refuse to perform any of its obligations pursuant to this Agreement, the other party may pursue any remedy

available at law or in equity. A party may seek cumulative remedies, and failure of a party to insist upon a strict performance of any of the terms, covenants, and conditions hereof shall not be deemed a waiver of any rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, and conditions. If a party in good faith files a lawsuit to enforce or interpret the terms of this Agreement, the prevailing party in such litigation may be awarded compensation from the other party for its reasonable costs of such lawsuit, including but not limited to court costs, attorneys fees, and appellate costs and attorney fees related thereto.

4. This Agreement shall constitute a covenant running with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

5. This Agreement may be changed only by a written amendment executed by both parties hereto (or their successors or assignees).

6. This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both parties. This Agreement, with all amendments and attachments hereto, contains the entire agreement of the parties regarding the subject matter hereof. The invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. Section headings in this Agreement are for convenience only and shall not be used in interpreting its provisions. This Agreement shall be interpreted in accordance with the laws of the state of Kansas.

7. All notices required or allowed in this Agreement shall be in writing and shall be sent to the following addresses, or such other address as may be provided by one party giving notice to the other party of such change:

To WAAR: Attn: President
 Wichita Area Association of REALTORS
 540 S Broadway
 Wichita, KS 67202

To WaterWalk: Attn: Tom Johnson
 WaterWalk, LLC
 230 N Mosley, Ste E
 Wichita, KS 67202

Notice may be delivered by personal delivery, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

8. The time for performance of any obligation or the satisfaction of any contingency under this Agreement shall be extended for the period during which a party is prevented from performing by the act or omission of the other party, acts of God, government, or other force or event beyond the reasonable control of such party.

9. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which taken together shall constitute one and the same instrument regardless of whether all parties have executed the same counterparts.

10. A fully-executed original of this Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against WaterWalk Tract and/or the WAAR Tract by either party hereto (or their successors and assigns).

WATERWALK, LLC

WICHITA AREA ASSOCIATION OF REALTORS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ACKNOWLEDGMENTS

STATE OF _____)
) ss:
_____ COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 200__, before me, a Notary Public within and for the County and State aforesaid, came _____, _____ of _____, who is personally known to me and known to me to be the same person who executed the foregoing Agreement, and said person duly acknowledged before me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at _____(city), _____(state), on the date first above written.

Notary Public

My Appointment Expires:

STATE OF _____)
) ss:
_____ COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 200__, before me, a Notary Public within and for the County and State aforesaid, came _____, _____ of _____, who is personally known to me and known to me to be the same person who executed the foregoing Agreement, and said person duly acknowledged before me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at _____(city), _____(state), on the date first above written.

Notary Public

My Appointment Expires:

EXHIBIT A to EXHIBIT E

WAAR Tract

[insert WAAR Tract description]

EXHIBIT F

MONUMENT SIGN EASEMENT

THIS MONUMENT SIGN EASEMENT (hereinafter referred to as this "Agreement"), made and entered into on the ___ day of _____ 2006, by and between The City of Wichita, Kansas (the "City"), and WaterWalk, LLC ("WaterWalk") (the City and WaterWalk each hereinafter sometimes individually referred to as a "Party" and collectively as the "Parties").

WHEREAS, the City is the owner of the real property legally described on Exhibit A attached hereto (hereinafter the "Monument Sign Tract"); and

WHEREAS, the City desires to grant to WaterWalk an easement upon, over and under the Monument Sign Tract for the maintenance, repair, replacement and use of one existing sign upon the Monument Sign Tract, subject to the terms set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the City and WaterWalk hereby agree as follows:

1. Grant of Easement. The City hereby grants, conveys, declares, creates, imposes and establishes for the benefit of WaterWalk, LLC an exclusive easement for erection, use, maintenance, repair, and replacement as necessary, of one illuminated monument sign ("Sign"), and related utility infrastructure to support the Sign, upon, over and under the Monument Sign Tract.

2. Duration of Easement. The easement and rights granted herein shall continue until the expiration date of the last ground lease executed by the City covering any of the real property located within WaterWalk Phase 1 Addition, or WaterWalk Phase 2 Addition, additions to Wichita, Sedgwick County, Kansas, as those additions are platted as of the date hereof.

3. Reservation of Rights. The City hereby expressly reserves for itself, its successors and assigns all rights and privileges incident to the ownership of the fee simple estate of the Monument Sign Tract that are not inconsistent with the rights and privileges herein granted.

4. Maintenance; Taxes. WaterWalk shall maintain, repair and replace the Sign in compliance with all applicable codes and regulations, at WaterWalk's expense, without any contribution from the City. WaterWalk shall also be responsible for any and all real property taxes that may be assessed upon the Sign (but not for any taxes that may be assessed upon the Monument Sign Tract).

5. Default. If one Party defaults on the duties or obligations of such Party under the terms of this Agreement, the other Party may seek all legal and/or equitable remedies available. The prevailing Party of any litigation related to this Agreement shall be entitled to an award granted in said legal action of reimbursement from the other Party of such prevailing Party's

reasonable costs and expenses incurred with such legal action, including but not limited to court costs and reasonable attorneys' fees.

6. Miscellaneous Provisions.

6.1. No Public Use. The easement rights granted hereunder are not intended and shall not be construed as a dedication for public use.

6.2. Grants and Agreements. The Parties hereby declare that this Agreement, and all of the provisions contained herein and all of the rights, easements and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the Monument Sign Tract and benefiting and binding the same as set forth herein, and shall be binding upon all present and future owners thereof.

6.3. Assignment. The rights and obligations of WaterWalk pursuant to this Agreement shall be freely assignable in whole or in part.

6.4. Notices. All notices required or allowed in this Agreement shall be in writing and shall be sent to the following addresses, or such other address as may be provided by one party giving notice to the other party of such change:

To the City: _____
c/o City Clerk
455 N. Main, 13th Floor
Wichita, Kansas 67202

To WaterWalk: Attn: Tom Johnson
WaterWalk, LLC
230 N Mosley, Ste. E
Wichita, KS 67202

Notice may be delivered by personal delivery, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

6.5. Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance by such other Party of the obligations thereof under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of the rights thereof under this Agreement.

6.6. Severability. If any provision of this Agreement or the application thereof to any entity or circumstances shall be invalid or unenforceable to any extent, the remainder of this

Agreement and the application of such provisions to any other entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

6.7. Amendment. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by all of the Parties hereto (or their successors and assigns).

6.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

6.9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

6.10. Governing Law. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Kansas.

6.11. Recording. A fully-executed original of this Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against WaterWalk Phase 1 Addition, and/or WaterWalk Phase 2 Addition, additions to Wichita, Sedgwick County, Kansas, as those additions are platted as of the date hereof, by either the City or by WaterWalk, LLC (or their successors and assigns).

IN WITNESS WHEREOF, the City and WaterWalk have executed this Agreement as of the date set forth above.

CITY OF WICHITA, KANSAS

WATERWALK, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

ACKNOWLEDGEMENTS

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of the City of Wichita, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of WaterWalk, LLC, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of WaterWalk, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

EXHIBIT A to EXHIBIT F

Legal Description of Monument Sign Tract

[insert yet]

EXHIBIT G

CONFIRMATION OF PUBLIC PARKING USE

THIS CONFIRMATION OF PUBLIC PARKING USE (hereinafter referred to as this "Agreement"), made and entered into on the ___ day of _____ 2006, by The City of Wichita, Kansas (the "City"), for the benefit of WaterWalk, LLC ("WaterWalk") and The Wichita Area Association of REALTORS ("WAAR") (hereafter sometimes collectively the "Benefited Parties").

WHEREAS, the City is the owner of the parking structure presently located upon Lot 1, Block 2, and Lot 1, Block 3, WaterWalk Phase 1 Addition, an Addition of Wichita, Sedgwick County, Kansas ("Parking Structure"); and

WHEREAS, WaterWalk and WAAR have or intend to lease from the City real property located within WaterWalk Phase 1 Addition, and/or WaterWalk Phase 2 Addition, additions to Wichita, Sedgwick County, Kansas, as those additions are platted as of the date hereof; and

WHEREAS, WaterWalk and the City are parties to that certain WaterWalk Parking District Agreement concerning parking rights in the WaterWalk Parking District; and

WHEREAS, the City, WaterWalk and WAAR desire to clarify that the Parking Structure is dedicated for public parking use.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the City hereby confirms as follows:

1. Confirmation of Public Parking Use. The Parking Structure is and shall continue to be used and dedicated for use as a public parking facility and shall not be used or dedicated for use for private parking rights granted to any particular private party, and shall not be used or dedicated for use for commuter parking, long-term parking, commuter bus parking or a similar long-term use designation, or for such other uses as City and the Benefited Parties may unanimously agree in writing.

2. Duration. The term of this Agreement shall continue until the expiration date of the last ground lease executed by the City covering any of the real property located within WaterWalk Phase 1 Addition, or WaterWalk Phase 2 Addition, additions to Wichita, Sedgwick County, Kansas, as those additions are platted as of the date hereof.

3. Miscellaneous Provisions.

3.1. Default. This Agreement is executed for the benefit of the Benefited Parties and their successors, assigns, tenants and sub-tenants, and the City acknowledges that the Benefited Parties are relying on the contents of this Agreement. If the City breaches the terms of this Agreement, the Benefited Parties, and their successors and assigns may seek all legal and/or equitable remedies available. The prevailing party of any litigation related to this Agreement

shall be entitled to an award granted in said legal action of reimbursement from the other party of such prevailing party's reasonable costs and expenses incurred with such legal action, including but not limited to court costs and reasonable attorneys' fees.

3.2. Assignment. The rights and benefits running to the Benefited Parties pursuant to this Agreement shall be freely assignable in whole or in part.

3.3. Waiver. No consent or waiver, express or implied, by any of the Benefited Parties to or of any breach or default by the City of this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default by the City under this Agreement. Failure on the part of any of the Benefited Parties to complain of any act or failure to act of the City or to declare the City in default, irrespective of how long such failure continues, shall not constitute a waiver of any of the Benefited Parties of the rights under this Agreement.

3.4. Amendment. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by all of the Benefited Parties (or their successors and assigns) and by the City.

3.5. Recording. A fully-executed original of this Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against WaterWalk Phase 1 Addition, and/or WaterWalk Phase 2 Addition, additions to Wichita, Sedgwick County, Kansas, as those additions are platted as of the date hereof, by either the City or by any of the Benefited Parties (or their successors and assigns).

3.6. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the City has executed this Agreement as of the date set forth above.

CITY OF WICHITA, KANSAS

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of the City of Wichita, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____