

## ESCROW AGREEMENT

NOW COMES **WATERSTONE ROCHESTER, LLC**, a Delaware LLC, with a place of business c/o Waterstone Retail Development, Inc., with a mailing address of 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually "Waterstone Rochester"), and **WATERSTONE RETAIL DEVELOPMENT, INC.**, a Massachusetts corporation with a place of business, and mailing address, at 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually referred to as "Waterstone Retail") (Waterstone Rochester and Waterston Retail being hereinafter collectively referred to as "Waterstone") and the **City of Rochester, New Hampshire**, a municipal corporation with a principal place of business at 31 Wakefield Street, Rochester, New Hampshire (hereinafter referred to as the "City") and **Danford J. Wensley**, with offices at 40 Wakefield Street, Rochester, New Hampshire 03866 (herein referred to as the "Escrow Agent") (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), and state as follows:

**Whereas** Waterstone and the City have entered into a so-called Development Agreement dated August 6, 2014 (the "Development Agreement"), regarding the development of a certain tract of land located on the westerly side of NH Route 11 in Rochester, that involves the use of the provisions of NH RSA Chapter 162-K tax increment financing mechanism for the financing of certain Public Infrastructure Improvements related to, and necessary for the Project (as defined in the Development Agreement); and

**Whereas** the Development Agreement contains an agreement by Waterstone to guaranty, in full or in part, the payment of certain costs identified to in the Development Agreement and referred to respectively as the TIF Bond(s) and the Maintenance Costs by virtue of a so-called Guaranty Agreement (see **Exhibit B** to the Development Agreement), with such Guaranty to be secured by the within Escrow Agreement (the "Escrow Agreement"); and

**Whereas** the Parties agree, by execution of this Escrow Agreement, to appoint Danford J. Wensley, Esq., as Escrow Agent under this Escrow Agreement, and the said Danford J. Wensley, by signing this Escrow Agreement below agrees to serve as Escrow Agent under the provisions of the Development Agreement, the Guaranty Agreement and this Escrow Agreement for the purpose of implementing the provisions of the Development Agreement, the Guaranty Agreement and this Escrow Agreement relative to Waterstone's guaranty obligations thereunder and therein; and

**Whereas** the Escrow Agent is agreeable to act as escrow agent without compensation under this Agreement and to disburse the Funds in accordance with the terms and conditions set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement relative to Waterstone's guaranty obligations;

**Now, Therefore,** in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. Establishment of the Escrow Account

An escrow account shall be established under this Agreement by Waterstone with Escrow Agent who shall hold, invest in an interest bearing account, and distribute the Funds in accordance with the terms set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement. Waterstone shall fund the escrow account with the sum of \$150,000.00 on or about April 15, 2015;

Waterstone and the City agree that the funds (the "Funds") in the Escrow Account are to be used exclusively for the purposes, and in the manner, set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement.

2. Disbursements

The Escrow Agent shall disburse all or a portion of the Funds in accordance with the terms set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement. Prior to any disbursements of any portion of the Funds by the Escrow Agent, the Escrow Agent shall provide at least seven (7) days' prior notice to Waterstone and the City of its intend to release such portion of the Funds, and the purpose for which the Escrow Agent shall make such release, in accordance with the terms of the Development Agreement, the Guaranty Agreement, and this Escrow Agreement. If, within the above seven (7) day period, neither Waterstone nor the City disputes that the Escrow Agent shall release such portion of the Funds, the Escrow Agent may release such funds. In the event that the Escrow Agent is notified in writing (with a copy of the same being provided to the other party) during any above referenced seven (7) day period, of any dispute concerning the release of any portion of the Funds in question are in dispute, the Escrow Agent shall not release the an amount of funds from the Escrow account equal to the amount of Funds in dispute, but shall hold them pending mutual instructions from the City and Waterstone, or the Escrow Agent may immediately interplead the disputed Funds into a court of competent jurisdiction located in Strafford County, New Hampshire. Funds with respect to which no notice of dispute has been timely received by the Escrow Agent, may be released and disbursed by the Escrow Agent.

Upon proper disbursement all of the Funds to be placed, or contemplated to be paced, in Escrow by the terms of the Development Agreement, the Guaranty

Agreement and/or the Escrow Agreement, this Escrow Agreement shall terminate in accordance with the provisions of Section 2.14 (d) of the Development Agreement, Waterstone shall be reimbursed any unencumbered funds remaining in the escrow account, and thereupon Waterstone shall have no remaining obligation to replenish the Funds. Any reimbursements to be made to Waterstone shall be made directly from the Funds or otherwise, and shall not be made by way of any set-off against taxes.

### 3. Escrow Agent's Responsibility

The City and Waterstone hereby appoint the Escrow Agent to serve hereunder, and the Escrow Agent hereby accepts such appointment and agrees to perform all duties expressly set forth in this Agreement.

Upon disbursement of the Funds in accordance with the Development Agreement, the Guaranty Agreement and this Escrow Agreement, the Escrow Agent shall have no further responsibility with respect to the amounts so disbursed. In this regard, it is expressly agreed and understood that in no event shall the aggregate amount of disbursements from the Escrow Account by the Escrow Agent exceed the amount deposited by Waterstone in the Escrow Account plus any and all accrued interest.

The Escrow Agent shall have the authority to invest and reinvest the Fund's principal and income upon written notice from the City and pursuant to this Escrow Agreement in an insured savings account and/or accounts at a financial institution having a branch in Rochester, New Hampshire.

The Escrow Agent shall not be liable for any action taken or omitted hereunder or under this Agreement except in the case of its bad faith, gross negligence or willful misconduct.

The Escrow Agent shall furnish to the City and Waterstone an accounting of the receipts in, and disbursements from, the Escrow Accounts, as requested.

The Escrow Agent may resign at any time upon giving the City and Waterstone thirty (30) days' prior written notice; provided, however, that no such resignation shall be effective until a successor escrow agent shall have been appointed by the City and Waterstone and shall have accepted such appointment in writing. The City and Waterstone shall jointly consent to appointment of such successor escrow agent. Upon such appointment, the Escrow Agent's only duty shall be to

pay over to the successor escrow agent the Funds in the escrow pursuant to this Agreement. Neither this provision, nor any other provision of the Development Agreement, the Guaranty Agreement and/or the Escrow Agreement, shall prevent the Escrow Agent from representing the City with respect to any dispute regarding the distribution of Funds, or any matter arising out of the transaction between the parties giving rise to the Agreement. Furthermore, this provision shall not prevent the distribution of Funds by the Escrow Agent, the distribution of which are not in dispute.

4. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.
5. If any term or provision of this Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Agreement shall continue to be fully valid and enforceable.
6. Notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To Waterstone:                      Waterstone Retail, Inc.  
   145 Rosemary Street, Building B  
   Needham, MA 02094

With a copy to:                      Waterstone Rochester, LLC  
   145 Rosemary Street, Building B  
   Needham, MA 02094

and to:

Robert Orsi, Esq.  
Orsi, Arone & Rothenberg  
160 Gould Street, Suite 320  
Needham, MA 02494

To City: Daniel W. Fitzpatrick, City Manager  
City of Rochester  
31 Wakefield Street  
Rochester, NH 03867

With copy to: City of Rochester  
Attn: Finance Director  
31 Wakefield Street  
Rochester, NH 03867

To Escrow Agentz: Danford J. Wensley  
Wensley & Jones, P.L.L.C.  
40 Wakefield Street  
Rochester, NH 03867

Any party to this Escrow Agreement shall be entitled to change the address to be utilized for notifications by giving the other parties written notice of such new address in the manner provided for in this paragraph.

7. The Parties agree that, unless otherwise specifically defined in this Guaranty agreement, defined terms as used or referred to herein shall have the same meanings as such defined terms have accorded to them in the Development Agreement.
8. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Escrow Agreement may be amended only by a written instrument signed by the City, Waterstone and the Escrow Agent.
9. This Escrow Agreement may be executed in any number of counterparts with the same effect as if the signatures on all counterparts were on the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the last date set forth below.

**CITY OF ROCHESTER**

\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_

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

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

**WATERSTONE  
ROCHESTER, LLC**

\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_

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

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

\_\_\_\_\_

**DANFORD J. WENSLEY**

\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_

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

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

**WATERSTONE RETAIL  
DEVELOPMENT, INC.**

\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_

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

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

**CITY OF ROCHESTER**

\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_

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

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

\_\_\_\_\_