

## **GUARANTY**

NOW COME, **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”) (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the “Parties”), and state as follows:

A. That the City and Waterstone entered into a Development Agreement (“Agreement”) dated August 6, 2014.

B. In accordance with the provisions of Section 2.14 of the Agreement, Waterstone agreed to enter into a guaranty agreement (the “Guaranty Agreement”) and escrow agreement (the Escrow Agreement”) in favor of the City whereby Waterstone agreed to: (1) guaranty any payments due on the TIF Bond(s), as well as certain maintenance costs with respect to the Public Infrastructure Improvements (the “Maintenance Costs”), to the City, in the event that payments set forth in Section 2.13 of the Agreement are insufficient to satisfy the payments due on the TIF Bond(s) and/or the Maintenance Costs to the City; and (2) an Escrow Agreement which shall provide additional security for the guaranty of Waterstone to the City as provided for in the Agreement as well as herein.

NOW THEREFORE, for good and valuable consideration and in exchange for the mutual promises contained by the Parties in the Agreement and in satisfaction of Section 2.14 of the Agreement:

1. Waterstone does hereby guaranty any payments due on the TIF Bond(s) and Maintenance Costs (as defined above and governed by Section 2.14(c) and (d) of the Development Agreement), with regard to the On-Site Infrastructure Improvements of the Project Premises included in the TIF District annual budget during the period from the issuance of the TIF Bonds, as defined in Section 2.13 of the Agreement until the TIF Bond(s) are retired as a result of being paid in full, in the event that payments set forth in Section 2.14 of the Agreement are insufficient to satisfy the payments due on the TIF Bond(s) and Maintenance Costs to the City. The guaranty hereby established includes, without limitation, all interest or other amounts which may be due to the City on the TIF Bond(s) and Maintenance Costs as provided for in the Agreement, and further the obligation to pay, upon demand, all costs and expenses, including counsel fees, which may be incurred in connection with the liabilities due to the City on the TIF Bond(s) and/or Maintenance Costs, or of Waterstone's obligations under this Agreement.

2. Waterstone will pay any insufficiency to satisfy the payments due to the City upon thirty (30) days written notice to Waterstone at the address specified in the Agreement, and elsewhere herein, as the funds placed into Escrow pursuant to the Escrow Agreement have been exhausted/diminished as provided for and/or contemplated in Section 2.13 and Section 2.14 of the Agreement.

3. The obligation of Waterstone in this Guaranty shall be direct and not conditioned or contingent upon the pursuit of any remedy against any other party or entity. This is a guaranty of payment, when due, and not merely of collectability. It is the intention of the parties to this Guaranty that this Guaranty may be resorted to in full, and that all liabilities will become immediately due and owing, notwithstanding that the City is unable to pursue or exhaust its remedies against any other party or entity, whether as a consequence of any intervening bankruptcy or for any other reason whatsoever.

4. All diligence in collection, and all presentment for payment, demand, protest, notice of protest, and notice of non-payment, dishonor or default, and of the acceptance of this Guaranty, are expressly waived.

5. No delay in the enforcement of payment or omission in exercising any right or power held by the City, or any other circumstances, shall affect the liability of Waterstone to this Guaranty.

6. Waterstone expressly waives all suretyship defenses.
7. It is represented and agreed that there are no conditions or limitations upon the undertaking in this Guaranty except those written or printed herein at the time of the signing hereof; and that after the execution, no alteration, change or modification shall be made except by writing, signed or initialed by all parties hereto.
8. This instrument shall be governed, construed and interpreted in accordance with the laws of the State of New Hampshire. The undersigned submit to the jurisdiction of the Courts of the State of New Hampshire for all matters in connection herewith.
9. This Guaranty is entered into with the full authority of the undersigned and for the purpose of satisfying the guaranty obligations set forth and/or contemplated in Section 2.14 and Section 2.13 of the Agreement.
10. This Guaranty is secured by an Escrow Agreement as referred to in Section 2.14 of the Agreement.
11. 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 Agreement.
12. This Guaranty is binding upon Waterstone and upon its successors and assigns and shall inure to the benefit of the City, its successors and assigns. Waterstone may, however, transfer or assign this Guaranty Agreement and any documents relating thereto to any unrelated third party to whom Waterstone sells or otherwise transfers ownership of the Project Premises (other than the transfer to the City of the portion of the Project Premises to the City contemplated in Section 2.15 of the Development Agreement) but only with the prior written consent of the City, which shall not be unreasonably withheld. In the event of such transfer, provided that Waterstone has transferred its obligations under the Guaranty and the Escrow Agreement, Waterstone may be relieved of any remaining obligations under this Guaranty Agreement or the Escrow Agreement to the extent provided for in the aforesaid transfer/assignment document required to be approved by the City pursuant to this sentence.

IN WITNESS WHEREOF, the parties hereto set, or caused to be set, their respective hands this \_\_\_\_ day of \_\_\_\_\_, 2015.

**WATERSTONE RETAIL DEVELOPMENT, INC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(Print Name) (title)  
Duly Authorized

**WATERSTONE ROCHESTER, LLC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(Print Name) (title)  
Duly Authorized

Accepted:

**CITY OF ROCHESTER, NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Daniel W. Fitzpatrick, City Manager,  
Duly Authorized