

*INTEROFFICE MEMORANDUM  
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO*

*DEPARTMENT: LAW*

*DATE: November 9, 2010*

*TO: Frederick M. Feldman, General Counsel*

*FROM: Lynda J. Holliday, Head Assistant Attorney*

*SUBJECT: Tentative Terms and Conditions of Settlement Agreement in the matter of Abec & Crowe v. Metropolitan Water Reclamation District of Greater Chicago, Case No. 03 CH 21800 Consolidated with 04 CH 752 and 03 MI 718897*

As a general overview, the purpose of the Settlement Agreement is to set forth the respective rights of the parties to the riverbank between Montrose and Lawrence Avenues on the banks of the North Branch of the Chicago River. In an interim order the Court has ruled that the homeowners have a defeasible easement interest in the land and the District is the fee simple owner of the land.

At issue before the Court is whether existing structures in the area should remain or whether the District should be allowed the opportunity to remove the structures.

After cross motions for summary judgment, the Court essentially ruled that the Adjacent Property Owners have a right to have docks on the easement property, finding these structures to be consistent with the grantor's intent to provide ingress and egress to the water's edge. Although the Court did not find that the Adjacent Property Owners had a right to other permanent structures which were not necessary improvements to enjoy their rights of ingress and egress, the Court indicated it would not sanction any attempt by the District to remove the structures not authorized by the 1903 deed unless and until the District demonstrated a need to widen the channel. As a result, the Agreement sets forth guidelines, procedures and fees for the continued presence of structures not authorized by the 1903 deed as well as guidelines and procedures for those structures authorized by the deed.

Highlights of the Agreement are as follows:

**Article I**

**Definitions**

**Article II**

**Ownership of the Land**

- A. MWRD holds fee simple title of the 45 foot strip of land along each side of the river. The Adjacent Property Owners have a defeasible easement until such time as the District needs to widen the river.
- B. A denial of the validity of the Agreement will cause the covenant (1903 deed) to revert to full force and effect.

- C. If the District sells its interest in the Riverbank the sale shall be pursuant to public bid and all Adjacent Property Owners will be given prior written notice.
- D. 1903 Deed is merged and superseded by Agreement.
- E. A Consent Decree encompassing the terms and conditions of the Settlement Agreement will be recorded with Cook County Recorder of Deeds to ensure that it is part of the public record affording notice to the public and all potential real estate purchasers.

### **Article III**

#### **MWRD's Rights and Obligations**

- A. The District has the right to regulate the use of North Branch and adjacent riverbank. The District should continue to maintain the North Branch as referenced by 1903 Deed.
- B. The District has the right to enter all parts of the Riverbank at all times in furtherance of its corporate purpose and for the health and safety of the public. This right shall include the right to cause or allow the temporary inundation of the Riverbank by an increase to the elevation of the River when done in furtherance of the District's purpose. The District is not liable for any damage caused by such action unless its conduct is willful and wanton.
- C. The District has the right to widen the North Branch upon demonstrated need as determined by the Board of Commissioners.
- D. If widened, the homeowner's easement remains valid for those areas not included in the widened channel.
- E. District shall not undermine lateral support.
- F. District has the right to enter the premises in emergency situations without notice.
- G. District retains all statutory rights pursuant to 70 ILCS 2605 et seq.

### **Article IV**

#### **Rights of Adjacent Property Owners**

- A. Easement Rights
  - 1. Settlement Agreement is not a new conveyance.
  - 2. Homeowners have the right to use easement property subject to District's rights. Each homeowner has an insurable defeasible interest in his/her easement.
  - 3. Homeowners have the right to maintain and use the existing and future structures subject to the limitations set forth in the Agreement for personal and recreational

purposes. Structures may not be used for commercial purposes. Homeowners must maintain structures in good repair and in safe condition.

4. Agreement does not waive any rights Adjacent Property Owners may have in disputes with other governmental bodies.

B. Existing Structures

Adjacent Property Owners have the right to maintain and use existing Authorized and Licensed structures as well as constructing and using new Authorized and Licensed Structures.

Authorized Structures include those structures the court deemed authorized by 1903 deed which include docks and those structures necessary for ingress and egress from the water's edge.

Licensed Structures include those structures currently existing on the land but not authorized. The court has indicated it will not allow the District to remove these structures.

Adjacent Property Owners must notify District, within 60 days, of all structures located on easement property. This affords the homeowner an opportunity to obtain a license for existing structures.

Adjacent Property Owners must submit an Engineer's Report for all Authorized Structures and unauthorized structures. A written report, after visual inspection, affirming that the structure does not pose an undue hazard to navigation on the River, that it does not unduly impede the flow of the River, that there is no visual evidence of material structural defects and that the structure does not pose an immediate threat to public health or safety.

Should Adjacent Property Owners fail to provide the Engineer's Report for a Licensed Structure within the time period, late filing fees will be assessed. If, after one year, Adjacent Property Owners fail to provide the Report, the District may remove such structure without liability.

Fences that prevent public access to the channel along the Riverbank are not permitted, unless such fences are constructed and maintained to prevent or minimize liability to the District and/or the Adjacent Property Owners and/or to protect the health and/or safety of the general public.

Boats that are docked along the river shall be moored parallel to the flow of the river and shall not unduly protrude into the waterway.

Fine structure for failure to comply with mooring requirements.

C. Future or Replacement Structures

The District will allow the future construction of structures or the replacement of existing structures on Easement Property subject to the procedures set forth in the Agreement (i.e. must get prior approval from District, submit Engineer's Report and pay appropriate fees).

Any new docks must be floating docks.

District may promulgate reasonable guidelines regarding design, structural integrity, size, etc. of structure.

Adjacent property owners may apply for a license for a new licensed structure. Plans and specifications shall be submitted to the Director Engineering with a \$250.00 application fee.

Timeline for submittal process.

The District shall grant license unless new structure:

- (a) Would materially impede the flow of the river;
- (b) Would pose a hazard to navigation on the river;
- (c) Is intended or could be used as a dwelling;
- (d) Is deficient in design.

Adjacent property owner may not construct new fences other than replacement fences.

District may issue reasonable guidelines regarding design, structural integrity and size.

## **Article V**

### **Easement Administration and Licenses**

Annual Easement Administration fee of \$300.00. After expiration of initial ten-year period fee will be increased by 10%.

If property is sold, owner can request that license be assigned to new owner. Licenses are valid for a ten-year period.

License can be renewed.

## **Article VI**

### **Restrictions on use of the Riverbank**

Adjacent Property Owners agree not to maintain a nuisance.

Adjacent Property Owners agree to comply with any and all valid statutes, laws, ordinances and regulations of the MWRD and all other governmental agencies.

No structure may be constructed on the Riverbank that would materially interfere with or obstruct the flow of the River or the operation of the river's hydraulic functions.

## **Article VII**

### **Right to Terminate**

The District has the right to remove structures upon demonstrated need to widen the river.

Any removal shall not be considered a "taking".

License termination procedure.

## **Article VIII**

### **Insurance and Indemnification**

Adjacent Property Owners are required to defend and indemnify the District for all injuries, deaths, damages, claims, etc. resulting from the use of the easement.

Adjacent Property Owners are required to procure Comprehensive General Liability coverage in the amount of \$4,000,000.00 per occurrence from an "A" rated carrier according to A.M. Best or Standard & Poors. After evidence that 3 "A" rated carriers will not provide coverage, a licensed insurance carrier with no less than a B+ rating may be utilized.

## **Article IX**

### **Notice Requirements**

Notice shall be given personally or by registered or certified mail.

## **Article X**

Agreement contains a Dispute Resolution provision.

## **Article XI**

No representation of fitness or condition of the land.

## **Article XII**

Each party agrees to dismiss their respective lawsuits with prejudice.

## **Article XIII**

Each party shall pay its own legal fees.

## **Article XIV**

### **Agreement to Entry of a Consent Decree**

Parties agree that Settlement Agreement will be incorporated into a Consent Decree.

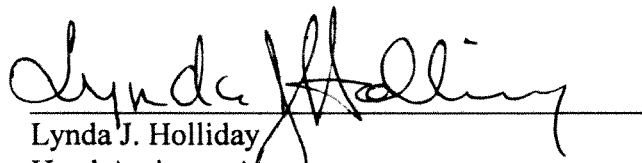
**Article XV**

**De Minimus Exception**

Encroachments of 2.5 feet or less are not subject to the Agreement.

Annual rent amounts for major encroachments set by the Court.

Upon acceptance of the Settlement Agreement by the Court, it will enter a Consent Decree which will be applicable against all homeowners in the area and filed with the Cook County Recorder of Deeds.

  
Lynda J. Holliday  
Head Assistant Attorney

LJH:crb

## **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Metropolitan Water Reclamation District of Greater Chicago (henceforth “MWRD” also referred to as Plaintiff); the Abec Defendants/Cross-Plaintiffs, the Crowe Defendants/Cross-Plaintiffs and all Defendants to the MWRD Amended Complaint who are neither Crowe or Abec Cross-Plaintiffs (collectively, henceforth “Defendants”); and the Ravenswood River Neighbors Association (the “RRNA”). The MWRD is an Illinois Municipal Corporation operating in the County of Cook, and the Defendants are individuals residing in the State of Illinois, County of Cook. The RRNA is an Illinois not for profit corporation.

### **RECITALS**

A. In 1903 the Chicago Title and Trust as trustees of the Northwest Land Association conveyed and transferred approximately 13.07 acres of real property, a 180 feet wide tract of land between Montrose and Lawrence Avenues in the City of Chicago, to the Sanitary District of Chicago n/k/a MWRD by deed, which was recorded as Document No. 3466717, for the purpose of constructing and maintaining a new channel for the North Branch of the Chicago River as an adjunct to the main channel of the Sanitary District of Chicago in accordance with the provisions of an ordinance and a resolution passed by the MWRD on the 23<sup>rd</sup> day of April, 1902.

B. The grantors of the real property reserved certain rights for themselves and their successors in the 1903 document.

C. The Sanitary District constructed a 90 foot wide channel on the deeded real property, leaving an approximately 45 foot wide strip of exposed land on each side of the channel.

D. It is the MWRD's position that it is the owner of the remaining approximately 45 feet of land on each side of the channel (the "Riverbank") and that any rights reserved by the grantor to the use of such lands have expired as a matter of law. The grantor's successors, the Defendants/Cross-Plaintiffs herein (Abec and Crowe), disagree, and assert that they have retained easement and other rights in the land conveyed.

E. The Defendants are abutting homeowners to the Riverbank, owners of condominium units in buildings that abut the Riverbank or owners of condominium buildings that abut the Riverbank, and over the years have constructed on the Riverbank private decks, docks, fences, garages, retaining or erosion protection walls, terraces, stairways, walkways, storage sheds, walls and brick columns, landscaping and other structures and are asserting a right to the continued use and occupancy of the land in this fashion.

F. From time to time, the MWRD has asserted its ownership and demanded that the structures be removed from the Riverbank, which has resulted in a dispute between the MWRD and the abutting homeowners. Consequently, the MWRD filed a Complaint for Declaratory Relief, Intentional Trespass, Forcible Entry and Detainer and Ejectment entitled *Metropolitan Water Reclamation District of Greater Chicago v. Joy Donovan, et al.*, Case No. 03 M1 718897. In response the Abec Plaintiffs filed an action for Injunction, Declaratory Relief, Quiet Title, Laches, Waiver and Estoppel, Adverse Possession-Quiet Title, and Illegal Assessment entitled *James Abec, et. al vs. The Metropolitan Water Reclamation District of Greater Chicago*, Case No. 03 CH 21800. Also, the Crowe Plaintiffs filed an action for Declaratory Judgment, Reverter, Unconstitutional Taking, Laches, Unauthorized Tax, Permanent Injunction, and Quiet Title entitled *Brian Crowe et. al. vs. Metropolitan Water Reclamation District of Greater Chicago*, Case No. 04 CH 00752. Said cases have been consolidated and are still pending in the Chancery



Division of the County Department of the Circuit Court of Cook County, as no final judgment or other final order previously has been entered in the case. Together, these cases are hereinafter referred to as the "Lawsuits."

G. The MWRD has amended its complaint from time to time to name all individuals or entities that have, or may have, interests in or to the Riverbank, it being the intent of all parties to this agreement that this agreement be recorded and enforced as a consent judgment.

H. The parties to the above Lawsuits each filed Motions for Summary Judgment. The court rendered its written decision as to all Motions on September 6, 2006, (hereinafter "Decision of 9/6/06") but such decision did not resolve all of the issues among the parties, and the parties have either filed motions to clarify or amend the Court's decision.

I. All parties acknowledge that a dispute exists, that the Decision of September 6, 2006 needs clarification on certain issues and that it is in their respective best interests to clarify the court's Decision of September 6, 2006 and resolve their disputes pursuant to a Settlement Agreement. It is understood and agreed that this settlement is in compromise of all disputed matters raised in the Lawsuits and such settlement is not to be construed as an admission other than as specifically set forth herein and is intended to merely avoid future litigation to the extent possible.

J. The MWRD has had the counsel of its staff attorneys. The Abec Plaintiffs have employed and have had the benefit of counsel, Thomas K. Tryboski, Robbins Saloman Patt and Cary E. Donham, as their attorneys, and the Crowe Plaintiffs and the Ravenswood River Neighbors Association have employed and has had the benefit of counsel, Cary E. Donham, Jack J. Hagerty and Suzanne L. Sias and Gabriel Reilly-Bates, Shesky & Froelich as their attorneys. All parties expressly state that they have freely and voluntarily entered into this agreement free

of any duress or coercion and with full knowledge of each and every provision contained in this agreement, and the consequences thereof, each party having understood the legal rights and duties as between the parties; the range of what the court and/or jury may order if called upon to decide the case as a contested matter; and the legal effect of each provision of this agreement.

In consideration of the foregoing and in further consideration of the mutual and several covenants contained below, the parties do hereby freely and voluntarily agree by and between themselves as follows:

## **AGREEMENT**

### **ARTICLE I.**

#### **(Definitions)**

A. 1903 Deed: The original Indenture dated July 22, 1903 conveying, subject to reservations, a fee simple interest in the full 180 feet wide strip of land, including both the Riverbank and that portion of the North Branch of the Chicago River which now flows through it recorded on November 11, 1903, in the office of the Recorder of Deeds of Cook County, Illinois. A copy of the recorded handwritten 1903 Deed is attached as Exhibit A, and a copy of the transcript of the 1903 Deed is attached for clarification purposes only as Exhibit A(1).

B. Adjacent Property: The real property directly adjacent to the Riverbank owned by an individual Adjacent Property Owner.

C. Adjacent Property Owners: All present and future owners or lessees of residential real estate, including the Board of Managers of condominium developments, which real property is located between Lawrence and Montrose Avenues in Chicago and which real property is directly adjacent to the Riverbank. The Adjacent Property Owner includes a land trust holding title to such residential property, as well as the beneficial owner of such land trust.

D. License: A document issued by the MWRD, the form of which is attached to this Agreement as Exhibit B and incorporated herein by reference, acknowledging that Licensed Structures, as defined herein, that are or will be placed on the Riverbank meet the requirements described in Article IV of this Agreement.

E. Director of Engineering: The Director of Engineering, or any officer or agent with equivalent duties and responsibilities, of the MWRD, as that term is defined in paragraph I.K. of this Agreement.

F. Docks: Docks, piers, wharves, slips, canals or similar structures, including appurtenances, whether floating or fixed, including any permanently affixed appurtenant hardware for floating docks, which are dug into, lie along the bank of, or project from the Riverbank into the North Branch of the Chicago River and are mechanically connected or affixed thereto for the purpose of mooring boats and other watercraft or activities related to the use of such watercraft.

G. Easement Property: On the West side of the River, the portion of the Riverbank that lies immediately East of the property owned by the Adjacent Property Owner and extends in a line perpendicular to the River from the Northernmost corner of the Eastern boundary of the property owned by an Adjacent Property Owner, and extends in a line directly east from the Southernmost corner of the Eastern boundary of the property owned by an Adjacent Property Owner, directly to the water's edge of the River, and on the East side of the River, that portion of the Riverbank that lies immediately West of property owned by an Adjacent Property Owner and extends in a line perpendicular to the River from the Northernmost and Southernmost corners of the Western boundary of property owned by an Adjacent Property Owner, directly to the water's edge of the River

H. Effective Date: The date the Court having jurisdiction over the Lawsuits as defined in Article I.I of this Agreement enters the Consent Judgment contemplated by Article XIV of this Agreement.

I. Fences: Fences, walls, gates and similar structures designed to prevent casual passage of humans and/or animals or protect the safety of persons or property.

J. Lawsuits: *James Abec, et al. vs. The Metropolitan Water Reclamation District of Greater Chicago*, Case No. 03 CH 21800; *Metropolitan Water Reclamation District of Greater Chicago v. Joy Donovan, et al.*, Case No. 03 M1 71889; *Brian Crowe et. al. vs. Metropolitan Water Reclamation District of Greater Chicago*, Case No. 04 CH 00752, consolidated in the Circuit Court of Cook County, Chancery Division as Case No. 03 CH 21800.

K. MWRD: The Metropolitan Water Reclamation District of Greater Chicago and its Commissioners, officers, employees, invitees or its contractors and agents and employees, subcontractors and successors thereof.

L. Retaining Walls: Stone, wood, concrete, vinyl and earthworks which materially alter the natural contours of the Riverbank, and which generally are intended to prevent erosion, to stabilize the Riverbank and/or to create flat land areas thereon.

M. River: The present water channel of the North Branch of the Chicago River between Montrose and Lawrence Avenues in Chicago, Illinois.

N. Riverbank: The sloping and non-sloping strips of dry land, each approximately 45 feet in width total, along each side of the River, between Montrose and Lawrence Avenues, which were part of the original 180 foot conveyance to the MWRD as set forth in the 1903 Deed, and which were the subject of the referenced Lawsuits and includes all land described in the 1903 Deed not presently covered by the waters of the River.

O. RRNA: The Ravenswood River Neighbors Association, an Illinois not-for-profit corporation whose members are Adjacent Property Owners, or its successor(s).

P. Structures: Decks, Docks, Retaining Walls, above ground structures such as storage sheds or garages, terraces and other landscaping installations, patios, stairways, walkways, walls and brick columns located on the Riverbank.

Q. Authorized Structures: (i) existing or future docks; (ii) existing or future stairways or walkways, including attached decks at or near the water level, that allow ingress to or egress from the Riverbank or any dock; and (iii) any existing Retaining Wall, unless the Adjacent Property Owner fails to obtain and submit to the MWRD in a timely manner an APO Engineer's Report as defined in and required by Article IV.B.3-5 of this Agreement.

R. Licensed Structure: Any Structure not an Authorized Structure, as defined in this Agreement requiring a license.

## ARTICLE II.

### **(Ownership of the Land)**

A. The Metropolitan Water Reclamation District of Greater Chicago is the legal owner of and holds fee simple title to the approximately 45 feet wide strips of land along either side of the North Branch of the Chicago River, between Montrose and Lawrence Avenues in Chicago, Illinois, which were the subject of the referenced Lawsuits and have been referred to in the Lawsuits as the "disputed property" and which is referred to herein as the "Riverbank", which was part of the original 1903 180 foot conveyance to the MWRD. The legal description of the original 1903 conveyance is set forth in more detail in Exhibit C, which is incorporated herein and made part of this Agreement. The legal descriptions of each of the individual properties abutting or adjacent to any part of the 1903 conveyance are included as Exhibit D,

which is incorporated herein and made a part of this agreement. The parties agree that the Adjacent Property Owners and their successors have a defeasible easement over their individual respective Easement Property until such time as the MWRD uses the Riverbank to expand the width of the River. At the time of such widening, as set forth elsewhere in this Agreement, the easement shall be defeased, but only on those portions of the Riverbank that the MWRD actually takes for widening. The specific terms, conditions, burdens and benefits of this easement and the easement's defeasibility are fully set forth in this agreement.

B. Should any court of competent jurisdiction declare the terms and conditions of this Agreement to be invalid, unenforceable, or entered into without authority, the terms of this Agreement shall be void, the 1903 Deed shall revert to full force and effect and the parties to this Agreement may assert whatever rights they have under the 1903 Deed.

C. Should the MWRD decide to sell its interest in the Riverbank, such sale shall be pursuant to public bid and the RRNA and all adjacent Property Owners shall be given written notice of the bid and bid specifications at the time such public bid is announced, and any such sale shall be subject to the easement rights and settlement terms set forth herein, and any then current Licenses.

D. Except as provided herein, the terms and conditions of the 1903 Deed are merged into and superseded by this Agreement as to the relation between the MWRD and the grantor's successors.

E. The MWRD shall cause this document to be recorded with the Cook County Recorder of Deeds, with proof of such recording to be delivered to Cary E. Donham or Jack J. Hagerty, Shefsky & Froelich Ltd., 111 E. Wacker Drive, Suite 2800, Chicago, Illinois 60601, it being the intent of all parties to this Agreement that (i) the easement rights and obligations described herein shall run with the land, and (ii) each Adjacent Property Owner shall have an insurable but defeasible property interest in his/her/its respective Easement Property, subject to the terms and conditions of this Agreement.

### ARTICLE III.

#### **(The MWRD's Rights and Obligations)**

A. The MWRD has the right to regulate the use of the River and the adjacent Riverbank in furtherance of its corporate purpose and for the health and safety of the public. The MWRD shall continue to maintain the River, as called for in the 1903 Deed. The MWRD's maintenance obligation and right of regulation is subject to the easement rights and responsibilities of the Adjacent Property Owners, as fully described in this Agreement.

B. In order to carry out its right to regulate the Riverbank, the MWRD shall have, upon reasonable notice to Adjacent Property Owners, the right at all times to enter upon any and all parts of the Riverbank in furtherance of its corporate purpose and for the health and safety of the public. The MWRD shall, to the extent practicable, avoid such entry when it may achieve its purpose through other means. The MWRD shall conduct any such entry in a manner so as to minimize the damage, destruction or disturbance to any Structures, with regard to an Adjacent Property Owner's use and possession of the Riverbank and any Structures thereon and to avoid jeopardizing the health and safety of the Adjacent Property Owner or such owner's guest or agents. The right of access shall include the right to cause or allow the temporary inundation of

the Riverbank by an increase to the elevation of the River when done in furtherance of the MWRD's corporate purpose. The MWRD shall not be liable for any loss, costs or damage to any Adjacent Property Owner by reason of its activities on or near the Riverbank in exercising this right of access, unless the MWRD acts willfully or wantonly, or materially violates a term of this Agreement. However, neither this provision nor any other provision of this Agreement relieves the MWRD of any liability the MWRD may otherwise have under then-existing law to an Adjacent Property Owner for damage the MWRD causes to Adjacent Property.

C. The MWRD shall have the right, upon demonstrated need as determined by the MWRD Board of Commissioners and with advance notice to the Adjacent Property Owner, to widen the current North Branch of the Chicago River for a water channel. In the event of a widening, the MWRD shall, to the extent practicable, widen the North Branch equitably on the east and west Riverbanks. The MWRD shall have the right to remove, or require the Adjacent Property Owner to remove, any and all Structures affected by the widening. The MWRD shall, whenever practicable, satisfy such demonstrated need in a manner which minimizes the damage, destruction or disturbance of any Structures. This paragraph shall be subject to the dispute resolution mechanism in Article X hereof.

D Should the need for an expanded water channel require the MWRD to use part, but not all, of the Riverbank, the rights of the Adjacent Property Owners shall in all respects remain valid for each and every part of the Riverbank not used by the MWRD for the widened channel, including the reconstruction in kind of any Structures that were demolished during the widening.

E. The MWRD, in carrying out its right of regulation and obligation of maintenance under this Article, shall not undermine the lateral support for the property of any Adjacent



Property Owner, provided however that the MWRD shall not be responsible for the undermining of Riverbank stability and lateral support for areas in and about structures installed on the Riverbank for the benefit of the Adjacent Property Owner caused by the presence of such structures.

F. Nothing in this section shall be construed to prevent the MWRD from entering onto the Riverbank in an emergency situation that poses an immediate serious threat to public health and safety in order to remedy or mitigate such immediate serious threat.

G. Nothing in this Section will operate to limit or extinguish any and all statutory rights the District currently has pursuant to 70 ILCS 2605 *et seq.*

#### ARTICLE IV.

##### **(Rights of Adjacent Property Owners)**

###### A. Easement Rights.

1. This Agreement represents a settlement, compromise and clarification of easement rights retained by the grantors and their successors in the 1903 Deed, and does not reflect a new conveyance by the MWRD or the Adjacent Property Owners of any property right or interest.

2. Each Adjacent Property Owner shall have the right to use and possession of his/her respective Easement Property, subject to the MWRD's right of temporary inundation, regulation and access and obligation of maintenance described in Article III, and other limitations expressly set forth elsewhere in this Agreement. The parties contemplate that each Adjacent Property Owner shall have an insurable defeasible property interest in his/her Easement Property, and that the RRNA shall also have an insurable interest in the Riverbank, sufficient to allow procurement of liability insurance as described in Article VIII of this Agreement, which

shall run with the land. The parties agree to execute such documents as may reasonably be required by insurers, regulatory agencies or similar third parties to allow the Adjacent Property Owners to use and possess his/her Easement Property, subject to the terms and conditions of this Agreement.

3. The rights of use and possession of the Easement Property retained by the Adjacent Property Owners includes maintaining and using existing Authorized and Licensed Structures, as well as constructing and using new Authorized and Licensed Structures and landscaping, as well as boats and watercraft, and shall include the right to access the River, subject to the limitations set forth in this Agreement. All Structures on Easement Property are solely for the personal and recreational use of an Adjacent Property Owner and his/her tenants and invitees, and may not be used for commercial purposes. Adjacent Property Owners shall maintain all Structures in good repair and in safe condition at all times. However, nothing in this paragraph shall be construed as creating or imposing a duty on the part of the Adjacent Property Owners of maintaining the Riverbank or its structural integrity, or of maintaining structures constructed by the MWRD, its predecessors, or other third parties to this Agreement, except to the extent necessary to support or sustain Structures constructed, owned or operated by Adjacent Property Owner pursuant to the terms and conditions hereof.

4. With respect to any dealings or disputes that Adjacent Property Owners may have with governmental bodies other than the MWRD or other third parties to this Agreement, as to defeasibly vested or other rights that Adjacent Property Owners may have in the Riverbank under the 1903 Deed or otherwise, this Agreement is not intended to waive, release or terminate those rights, including but not limited to any applicable prior nonconforming

use or “grandfathering” status of Structures or uses of the Riverbank, which Adjacent Property Owners currently may enjoy, any other terms of this Agreement notwithstanding.

B. Existing Structures.

1. Within sixty (60) days of the Effective Date, all Adjacent Property Owners shall notify the MWRD in writing of all Structures located on Easement Property, except landscaping, claimed by an Adjacent Property Owner including the address and owner of the Adjacent Property which will be served by each Structure, and a description of each Structure (other than landscaping) thereon (the “Notice”). The purpose of the Notice is to create an inventory of all existing Structures other than landscaping, and afford the Adjacent Property Owner an opportunity to obtain a License for existing Licensed Structures. The parties agree that all Structures identified by an Adjacent Property Owner in a Notice are owned by that current Adjacent Property Owner, subject to the terms and conditions of this Agreement. Should an Adjacent Property Owner fail to notify the District within 60 days from the effective date, the MWRD may remove any existing Structure not identified in any Notice provided by an Adjacent Property Owner, upon ten (10) days written notice to the Adjacent Property Owner of the MWRD’s intent to remove the Structure.

2. No further action is required by an Adjacent Property Owner with regard to any Authorized Structures, other than to submit to the Director of Engineering an APO Engineer’s Report as described in Articles IV.B.3 and 4 below. No application fee may be imposed for an Authorized Structure. Adjacent Property Owners may repair or replace an Authorized Structure in the future in kind without resubmitting the notices and reports described therein, as long as the plans and design of the Authorized Structure remain unchanged. The

MWRD shall not be responsible for any damage occasioned by the removal of said structure, unless the MWRD acts willfully or wantonly, or materially violates a term of this Agreement.

3. Within one hundred and eighty (180) days of the Effective Date, each Adjacent Property Owner who has disclosed one or more Authorized or Licensed Structures on his/her Notice shall cause such Structures to be visually inspected by an Illinois licensed structural engineer (the "Engineer"), who shall: (a) issue a written report that (i) the Structure(s) do not pose an undue hazard to navigation on the River; (ii) the Structure(s) do not unduly impede the flow of the River; (iii) there is no visual evidence of material structural defects; and (iv) the Structure(s), to the best of the Engineer's knowledge, based on a visual inspection, does not pose an immediate threat to public health or safety ("APO Engineer's Report"). All Authorized and Licensed Structures located on a particular Easement Property shall be reported on a single APO Engineer's Report and delineate with specificity that each Structure included in the APO Engineer's Report complies with the standards previously described in this paragraph. Such APO Engineer's Reports shall be promptly provided to the Director of Engineering of the MWRD, shall be dated, signed and sealed by such structural engineer, shall contain a current photograph of each Structure and shall clearly identify by latitude and longitude the location of the Structure(s) inspected; shall state the qualifications of the Engineer; shall state that the Engineer has visually inspected any Structure(s) identified in the APO Engineer's Report; and shall contain an explicit statement acknowledging that the information contained therein is true and correct, subject to reasonable limitations as to the scope of the inspections. The parties agree that limitations in substantially the form attached hereto as Exhibit E are presumptively reasonable. An application fee of \$250 must be submitted to the MWRD in connection with the APO Engineer's Report for all Licensed Structures located on an Adjacent Property Owner's

Easement Property. The application fee is separate and in addition to the Easement Administration Fee described in Article V.A. of this Agreement.

4. If the Adjacent Property Owner is unable to obtain an APO Engineer's Report within 180 days from the Effective Date for reasons beyond the control of the Adjacent Property Owner, or due to economic hardship of the Adjacent Property Owner, he/she shall notify the Director of Engineering of the MWRD in writing of such circumstances, prior to the expiration of the 180 day period. The Adjacent Property Owner shall then be granted an additional 180 days in which to cause any necessary repairs to be made to the Authorized or Licensed Structure and to provide an APO Engineer's Report to the Director of Engineering. No further extensions shall be granted, except if, in the discretion of the Director of Engineering, good cause for such extension has been shown.

5. In the case of Licensed Structures, the MWRD shall issue a License within one-hundred eighty (180) days of the MWRD's receipt from each Adjacent Property Owner of the APO Engineer's Report described above which shall apply to all Licensed Structures identified in such APO Engineer's Report. The License Agreement shall be in the form attached hereto as Exhibit B. If the MWRD does not issue a License within such 180-day period after receipt of an APO Engineer's Report, there is a presumption that the License has been issued to the Adjacent Property Owner.

6. Failure to provide any required APO Engineer's Report for a Licensed Structure shall result in any License being denied for that Structure until such time as an APO Engineer's Report is submitted to the Director of Engineering of the MWRD. Late filing of the APO Engineer's Report after the 180 extension set forth in Article IV.B.4 hereof, will subject the APO to a late filing fee in the amount of \$150. If no Engineer's Report is submitted to the

MWRD within a year of the effective date of this Agreement, or within such additional time as a Director of Engineering may grant to an Adjacent Property Owner pursuant to the previous paragraph of this Agreement, for a Licensed Structure identified in a Notice, or for a Licensed Structure appearing on the inventory of Licensed Structures to be provided to the MWRD pursuant to this Agreement, the MWRD may, at its option and at its expense, remove such Licensed Structure, upon 30 days written notice to the Adjacent Property Owner responsible for such Licensed Structure. The MWRD shall not be liable to an Adjacent Property Owner for damage occasioned by the removal of such licensed structure.

7. No License shall be required to use those parts of the Riverbank which are not occupied by Licensed Structures.

8. Once an Adjacent Property Owner complies with Article IV.B.1-4 with respect to a Licensed Structure, that Owner may repair or replace components of that Licensed Structure in the future in kind without resubmitting the notices and reports described therein, as long as the plans and design of the Licensed Structure remain unchanged.

9. Fences that prevent public access to the channel along the Riverbank are not permitted, unless such Fences are constructed and maintained to prevent or minimize liability to the MWRD and/or the Adjacent Property Owner, and/or to protect the health and/or safety of the general public. The MWRD agrees that all existing Fences on the Riverbank may remain in place, including existing alley-end and street-end fences, and such other Fences as the MWRD and an Adjacent Property Owner may agree serve the purpose of minimizing liability to the MWRD and/or the Adjacent Property Owners and/or protecting the health and/or safety of the general public and/or the Adjacent Property Owners. Adjacent Property Owners may repair or replace existing fences, so long as such repairs or replacements conform to the RRNA by-law to

be promulgated pursuant to this Article IV.B.9. The MWRD reserves the right to remove any Fencing that obstructs the flow of the river or hinders the MWRD's access from the River, at or near the water's edge, for purposes of channel maintenance, as determined by the Executive Director, upon 60 days prior notice to an Adjacent Property Owner, and subject to the dispute resolution procedure in Article X of this Agreement. Each Adjacent Property Owner who maintains a Fence on Easement Property or on such other portion of the Riverbank as the MWRD and Adjacent Property Owner agree serves the purpose of minimizing liability to the MWRD and/or the Adjacent Property Owners and/or protecting the health and/or safety of the general public, shall provide the MWRD with a means of access to such Easement Property. Such means of access could include, without limitation, providing the MWRD with a key or electronic passcode to a locked gate. The RRNA agrees to issue a bylaw that requires all new or replacement Fences to comply with appearance and soundness guidelines specified therein. The MWRD agrees to provide 60 days notice prior to taking any action, including but not limited to the removal of fencing in the area, which the RRNA's insurer reasonably determines will affect the insurability of the Easement Property pursuant to Article VIII of this Agreement, so that the RRNA and/or Adjacent Property Owner can determine whether such removal will cause a cancellation or reduction of insurance coverage to be obtained pursuant to Article VIII of this Agreement. In such a case, the MWRD shall not remove such Fence or Structure or take such other action unless and until replacement insurance coverage can be obtained on a commercially reasonable basis. Nothing in this section shall be construed to prevent the MWRD from entering onto the Riverbank in an emergency situation that poses an immediate serious threat to public health and safety in order to remedy or mitigate such immediate serious threat, but if the MWRD removes a Fence as a result of such emergency, it agrees to replace such Fence once the

emergency has passed if the RRNA's insurer reasonably determines that the absence of such Fence will cause a cancellation or reduction of insurance coverage to be obtained pursuant to Article VIII of this Agreement.

10. Advance written notice is not required if the MWRD must remove a Fence to address an imminent threat to public health and safety. In such circumstances, the MWRD shall give such notice as is practicable. The MWRD shall not be liable to the Adjacent Property Owner for any damage occasioned by the Fence removal. Once an imminent threat to public health and safety no longer exists, an Adjacent Property Owner may replace a removed Fence at his/her/its own expense, unless the insurer of the Easement Properties as set forth in Article VIII of this Agreement determines that such Fence is necessary as a condition of maintaining the insurance required by Article VIII of this Agreement, which situation is governed by Article IVB9 above.

11. Boats that are docked along the river shall be moored generally parallel to the flow of the river and shall not unduly protrude into the waterway, *i.e.*, more than the combined width of the boat itself, the dock and the appropriate clearance between the dock and boat, such that the boat does not unduly impede navigation on the river or impede the flow of the river. Failure to comply with this condition shall result in immediate written notice to the Adjacent Property Owner responsible for a non-compliant docking, with a copy to the RRNA, that failure to cure this condition within 72 hours will result in a fine payable to the MWRD by the responsible Adjacent Property Owner in the amount of \$250. This fine shall double if the offending condition is not cured within the subsequent five (5) days after the initial 72-hour cure period and shall double again if the condition is not cured within an additional five (5) day period. If the condition is not cured within the second five-day cure period, the MWRD may



take possession of the offending boat and assess the Adjacent Property Owner reasonable storage charges. Nothing in this paragraph shall be construed as exempting Owners from compliance with any local, state and federal ordinances when applicable to the storing, operating or using any water vehicle, and any MWRD ordinances are subject to the provisions of Article II of this Agreement.

C. Future or Replacement Structures.

1. The MWRD shall allow the future construction of Structures, or the replacement of existing Structures on Easement Property by the respective Adjacent Property Owner, subject to the limitations contained in this Article IV.C. (Collectively, new or replacement structures are referred to herein as “new” Structures.

2. Any new Docks must be floating Docks. No other type of new Docks may be constructed on the Riverbank, without the express written consent of the Director of Engineering of the MWRD. All new Authorized Structures, including new Docks, are subject to the application procedure in Article IV.C.3-5 below, except that no application fee or License may be imposed for a new or replacement Authorized Structure.

3. An Adjacent Property Owner shall apply to the MWRD for a License for a new Licensed Structure. An application for a License for a new Licensed Structure must be submitted to the Director of Engineering, and must include plans and specifications for the proposed new Licensed Structure, stamped by an engineer or architect, as appropriate.

4. The application fee of \$250 for a new Licensed Structure must be submitted to the MWRD with the application. The Director of Engineering shall, within ninety (90) days of submission of the plans and specifications, accept such plans and specifications or provide to the applying Adjacent Property Owner, in writing, any necessary deficiencies

requiring revisions to the plans. If the MWRD does not issue a License within such 90-day period, provided the MWRD has not provided advice of necessary revisions, there is a presumption that the plans and specifications submitted by the Adjacent Property Owner have been approved, except that the MWRD may provide written notice to an Adjacent Property Owner that it requires up to an additional 30 days to review plans and specifications. At the end of any additional 30-day period, there is a presumption that the plans and specifications have been approved, unless the MWRD provides written notice of necessary revisions to the plans and/or specifications to the Adjacent Property Owner. Any disagreement over whether the Director of Engineering's proposed revisions are appropriate may, if not resolved informally, be submitted to the dispute resolution procedure set forth in Article X hereof. The MWRD may waive the need for plans to be stamped by an engineer or architect if the Adjacent Property Owner is submitting plans for a prefabricated floating dock, manufactured by an established, reputable vendor.

5. The MWRD shall grant such License or accept a new Authorized Structure unless the proposed new Structure:

- (a) would materially impede the flow of the River;
- (b) would pose a hazard to navigation on the River;
- (c) is intended, or could be used, as a dwelling containing plumbing, electrical or heating capabilities. However, electrical lighting on the Riverbank is permitted to allow safe use of walkways and other Structures; or
- (d) appears from the APO Engineer's Report to be so deficient in design as to pose a safety risk to users of the proposed Structure. In such a case, the Adjacent

Property shall have 120 days to repair or redesign the proposed Structure, obtain an updated APO Engineer's Report and submit such updated report to the Director of Engineering.

6. Within 45 days after a new Licensed or Authorized Structure has been built, a licensed structural engineer shall certify to the Director of Engineering in writing that the new Structure was built in accordance with the plans submitted to and accepted by the Director of Engineering. Failure to submit said certification within 45 days will result in a late filing fee of \$150 unless an extension of the time period has been granted by the Director of Engineering to the Adjacent Property Owner. Adjacent Property Owners shall have the same right to replace and repair components for new Structures as for existing Structures, as set forth in Article IV.B. of this Agreement.

7. An Adjacent Property Owner may not construct new Fences on his/her/its Easement Property, other than replacement Fences constructed in accordance with the RRNA bylaw to be promulgated pursuant to Article IV.B.9 of this Agreement unless, in the determination of the MWRD, such Fences are designed to protect the health and safety of the public, and to minimize liability to the MWRD and/or the Adjacent Property Owner.

8. The MWRD may, from time to time, promulgate reasonable guidelines regarding design, structural integrity, size, etc., concerning Structures, which guidelines shall be applicable to all new or materially changed Structures. Such guidelines may not be invoked in a manner to substantially reduce the rights of Adjacent Property Owners to have, use, or construct new Structures. The MWRD shall negotiate such proposed guidelines in good faith with RRNA prior to promulgation and shall give reasonable prior notice to RRNA or its successor of its intent to promulgate such guidelines, and the proposed effective date of such guidelines. If the

RRNA or its successor no longer exist, the MWRD shall provide reasonable notice to the Adjacent Property Owners as provided in Article IX.

#### ARTICLE V.

##### **(Easement Administration and Licenses)**

A. Solely to defray the MWRD's costs of administration of the easement rights and responsibilities of Adjacent Property Owner as set forth in this Agreement, an Adjacent Property Owner with one or more Licensed or Authorized Structures shall pay to MWRD an Annual Easement Administration Fee of \$300 (Three Hundred and No/100 Dollars) per Adjacent Property. Upon expiration of the initial 10 year period, a new Annual Easement Administration Fee of 10% more than the Annual Easement Administration Fee for each of the prior 10 years (*i.e.*, \$330) shall be assessed annually during the next ten year period. For each subsequent 10 year period, the Annual Easement Administration Fee shall similarly increase by 10% over the amount of the Annual Easement Administration Fee during the prior 10 year period.

B. Authorized Structures are assignable by an Adjacent Property Owner to a subsequent Adjacent Property Owner. A new Adjacent Property Owner shall provide notice of the assignment to the MWRD within 180 days of the assignment.

C. A License shall be effective for ten (10) years and shall be renewable and assignable as described herein, unless it is terminated sooner by virtue of the provisions hereinafter provided.

D. Any applicant for a License must be an actual or beneficial owner of the Easement Property and must, upon request by the MWRD, provide reasonable proof of ownership.

E. A License is automatically renewable, except that for currently existing Licensed Structures, an Adjacent Property Owner must provide the Director of Engineering with an updated APO Engineer's Report, as described in Article IV.B.3-5. of this Agreement, within 180 days of expiration of a prior License. An updated APO Engineer's Report is valid as long as it is no more than one year old. Failure to submit an updated APO Engineer's Report in a timely manner may result in the demolition of Licensed Structure in accordance with the notice requirements set forth in Article IV.B.6.

F. Prior to the renewal/extension of a License, each Adjacent Property Owner will be required to notify the MWRD of its intent to renew, and affirmatively state there have been no additions, improvements or structural changes, etc. to the existing Structures since the initial authorization.

F. If at any time after a License is issued there is a change in ownership of the property adjacent to a specific Easement Property, the new owner shall file with the MWRD no later than 45 days after the change in ownership a request for assignment of the License previously issued. Licenses are assignable to an Adjacent Property Owner's successors and assigns. A License holder contemplating a sale of his/her/its property may apply for an assignment of his/her License prior to closing, and the MWRD shall reasonably cooperate in facilitating the transfer of such License as part of the closing process.

## ARTICLE VI.

### **(Restrictions on Use of the Riverbank)**

A. Subject to the license renewal process in Article V, which shall suspend any removal obligations of this paragraph, an Adjacent Property Owner is required on or before the termination date of a License to remove the Structure(s) listed on the License which were erected

or placed upon said premises by such Adjacent Property Owner. Upon the Owner's failure so to do, the MWRD may do so at the sole expense and cost of the License holder.

B. Adjacent Property Owners agree not to maintain any nuisance on the Riverbank which shall be in any manner injurious to the health and safety of persons residing or being in the vicinity of said premises.

C. Adjacent Property Owners agree that they shall use their best efforts to comply with any and all valid statutes, laws, ordinances and regulations of the MWRD, subject to the terms and conditions of this Agreement; the United States of America; the State of Illinois; the County of Cook; and the City Chicago, which in any manner affect the Riverbank. The MWRD agrees to reasonably cooperate in applying for and obtaining any third party governmental permits and approvals that might be necessary to allow Adjacent Property Owners to exercise those rights contemplated by this Agreement, but in no event will the MWRD sign or become a party to any government permit or approval, other than as otherwise is set forth in Articles IV and V of this Agreement. A list of any such permits of which the parties are aware as of the effective date of this Agreement is attached hereto as Exhibit F. The parties agree that this Agreement does not grant the MWRD any contractual right to enforce against any Adjacent Property Owner any statute, law, ordinance or regulation of any federal, state or local agency, and that the MWRD's obligation to review and process Authorizations, as set forth in Articles IV and V of this Agreement, is independent of any permit requirements imposed by any other governmental agency.

D. No Structure may be constructed on the Riverbank that would materially interfere with or obstruct the flow of the river or the operation of the River's hydraulic functions. No construction or improvements of any kind can project into the waterway other than those

Structures that exist at the time of this Agreement, except as provided in Articles IV.B. and IV.C. above.

E. No Structure may be maintained or constructed as to impose a material threat to the health and safety of the general public using the River.

## ARTICLE VII.

### **(Right to Terminate)**

A. The MWRD hereby reserves the right to remove all Structures on all or a portion of the Riverbank upon giving ninety (90) days notice, in writing, of such termination to any Adjacent Property Owner if and only if all or a portion of the Riverbank abutting such Owner's property is needed by the MWRD based upon the showing required by and procedure set forth in Article III.C. of this Agreement. In no event shall the MWRD's right to terminate any License or to remove any Structure set forth in this Agreement be considered a taking. However, nothing in this paragraph shall create a right of the Adjacent Property Owner that does not otherwise exist to share in any just compensation the MWRD may receive in any eminent domain proceeding brought by any other government agency. The right to maintain Structures and access the River shall survive any widening of the River. This paragraph is not intended to waive any independent right that an Adjacent Property Owner may have for just compensation with regard to his/her/its Easement Property in any eminent domain proceeding.

B. In the event an Adjacent Property Owner is found guilty of using or allowing the Riverbank to be used for any purpose which might reasonably subject the MWRD to civil or criminal liability as owner of the Riverbank, any License held by that Adjacent Property Owner may be terminated by the MWRD upon giving seven (7) days notice, in writing, to the Adjacent Property Owner, and the Adjacent Property Owner's failure to cure said alleged condition within

14 days after receipt of notice. Such written notice shall specify in detail the alleged improper purpose for which the Riverbank has been used. Any determination by the MWRD that there has been a failure to cure shall be subject to reconsideration or request for extension of time to cure or appeal such citation or violation if requested within three business days of receipt of said determination. Upon request for reconsideration or extension, a meeting shall promptly be held where the facts that are the basis for the termination shall be presented and the Adjacent Property Owner afforded an opportunity to rebut or explain the facts and why reconsideration or extension should be granted. Factors in the consideration for an Adjacent Property Owner's request for extension or reconsideration may include (a) whether the activity that resulted in the citation or guilty finding has abated; (b) whether 7 days is a reasonably sufficient time to cure the citation or violation; (c) the existence of any prior violations by the Adjacent Property Owner; (d) if the potential liability of the MWRD is civil, whether the Adjacent Property Owner has offered to indemnify the MWRD against such liability; (e) when any time limits applicable to enforcement proceedings brought by other governmental bodies (including applicable appeals) are exhausted; (f) whether the Adjacent Property Owner exercised actual control over the alleged violation; and (g) whether the Licensed Structure itself contributed to the alleged violation. If the determination remains unchanged, subject to the dispute resolution process set for in Article X, the Owner shall forthwith vacate said premises and remove his/her/its effects therefrom, and restore the premises to the condition existing prior to the Owner's entry thereon, at Owner's cost. Alternatively, the MWRD may do so at its own sole cost and expense. The intent of the parties, as set forth in this paragraph, is not to establish a general law enforcement mechanism to replace or parallel that of other agencies and the courts, as such matters are better left to the prosecutorial and other discretion of those agencies and the courts. Rather, the parties intend this paragraph to



apply only to violations of the law that create an actual, immediate danger to the interests of the MWRD.

## ARTICLE VIII.

### **(Insurance and Indemnification)**

A. The Adjacent Property Owner shall be solely responsible for and shall defend, indemnify, keep and save harmless the MWRD, its Commissioners, officers, agents and employees, against all injuries, deaths, losses, damages, claims, patent claims, liens, suits, liabilities, judgments, costs and expenses ("Claims") which may in any manner accrue, directly or indirectly, against the MWRD, its Commissioners, officers, agents or employees, as a result of the presence of a Structure owned by an Adjacent Property Owner on the Riverbank, traversing the Riverbank to access the Structure, or which may in any manner result therefrom or from any work done hereunder in constructing or maintaining a structure, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Adjacent Property Owner, or the Adjacent Property Owner's employees, or of any contractor or subcontractor, or their employees, if any, and the Adjacent Property Owner shall, at Adjacent Property Owner's sole expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith, and if any judgment shall be rendered against the MWRD, its Commissioners, officers, agents or employees, in any such action the Adjacent Property Owner shall, at the Adjacent Property Owner's sole expense, satisfy and discharge the same. The indemnification obligations of this paragraph are subject to the limits of the Comprehensive General Liability Insurance coverage required to be maintained pursuant to Article VIII.B. of this Agreement. This paragraph is not intended to indemnify or hold harmless the MWRD from or against any Claims that may arise from the MWRD's own negligence or

willful, wanton or intentional conduct, the negligence, willful, wanton or intentional conduct of any of the MWRD's employees, representatives or agents or any Claims that may arise out of the breach by the MWRD of this agreement. An Adjacent Property Owner is only severally liable for any Claims that relate to the Structure(s) located on his/her respective Easement Property, and is not jointly and severally liable for such Claims, and is not liable for Claims that relate to portions of the Riverbank other than his/her Easement Property.

B. To support the indemnification obligation in the preceding paragraph (i) the RRNA, within 180 days of the execution of this Agreement, (the "Grace Period"), shall procure at the expense of RRNA or its members or designees, comprehensive general liability insurance in which the RRNA and its individual members are the named insureds, and the MWRD is a named additional insured; or (ii) with regard to an Adjacent Property Owner not a member of the RRNA, within the Grace Period, such adjacent Property Owner shall procure at his/her/its expense, comprehensive general liability insurance ("CGL") coverage in which that Adjacent Property Owner is the named insured, and the MWRD is named additional insured; as well as fire and extended coverage, from an "A" rated carrier according to A.M. Best or Standard & Poors. However, if CGL coverage is not available at commercially reasonable rates from an "A" carrier after good faith efforts to obtain such coverage from at least three (3) "A" rated carriers, the RRNA shall make good faith efforts to procure coverage from a licensed insurance carrier with a rating of no lower than "B+" according to rating guides such as A.M. Best or Standard & Poors.. Each such RRNA member agrees to pay her/his/its pro-rata share of the annual premium for such insurance to the RRNA, and the RRNA agrees to collect such premium annually and pay it to the insurance carrier. Any Adjacent Property Owner who is not a member of the RRNA shall obtain such insurance at his/her expense to meet the indemnification

obligation set forth in the preceding paragraph. Each afore-referenced policy shall have limits including “umbrella” coverage, of not less than:

COMPREHENSIVE GENERAL LIABILITY

Combined Single Limit Bodily Injury Liability

Property Damage Liability in the amount of not less than **\$4,000,000.00**

per Occurrence

C. Upon the MWRD’s written request, the RRNA and any Adjacent Property Owners who are not members of the RRNA shall provided MWRD with copies of their actual insurance policies within ten (10) days of the MWRD’s request for same. Such certificates and insurance policies shall clearly identify the insured premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the MWRD.

D. If the RRNA has exhausted all commercially reasonable steps to obtain the insurance coverage described in Article VIII.B. of this Agreement and has provided the MWRD with documentation that at least three (3) “A” rated carriers and at least three (3) insurance carriers with a rating of no lower than “B+” according to rating guides such as A.M. Best or Standard & Poors have declined to issue the insurance coverage required by Article VIII.B. above due to market conditions, such inability to obtain insurance coverage shall be subject to the dispute resolution process in Article X of this Agreement. During the pendency of the dispute resolution process, the MWRD agrees that no structures or Fences will be removed unless an emergency situation arises that poses an immediate serious threat to public health and safety which requires the removal of same, as set forth in Article IVB9 of this Agreement. For

purposes of this paragraph, “declined to issue the insurance coverage required by Article VIII.B. due to market conditions” shall include the inability of the RRNA to obtain the required insurance coverage at commercially reasonable rates.

E. It is further expressly understood that the MWRD shall not be liable to an Adjacent Property Owner for any loss, cost, or expense which the Adjacent Property Owner may sustain by reason of any damage to the Adjacent Property Owner’s improvements and personal property on his/her Easement Property resulting from the construction, repair, reconstruction, maintenance, existence, operation, or failure of any of the sewers, structures, or other works or equipment of the MWRD now located or to be constructed on said Easement Property (collectively, “Works”), or on the portion(s) of the Riverbank adjacent to the Easement Property, so long as such Works is in furtherance of the MWRD’s corporate purpose and unless such liability derives from a violation by the MWRD of another section of this Agreement. It is further understood that the MWRD shall not be liable for any damage caused to an Adjacent Property Owner’s Easement Property, due to flooding of the North Shore Channel, whether intentional, unintentional or due to an Act of God.

F. If the MWRD reasonably identifies work on the Easement Property that is essential and necessary for the furtherance of its corporate purpose, then it shall be performed with reasonable notice at the MWRD’s expense. However, if and only if it can reasonably be shown that any portion of this work would not have had to be performed if a License had not been granted on the Easement Property, then (i) the MWRD shall provide reasonable notice to the Adjacent Property Owner of the need for such portion of the work that would have not otherwise been needed had a license not been granted, and reasonable specifications for such portion of the work and the Adjacent Property Owner may within a reasonable time, as

determined by the MWRD in consultation with the Adjacent Property Owner, perform such portion of the work to the MWRD's specifications at the Adjacent Property Owner's expense; or (ii) the Adjacent Property Owner agrees to pay to the MWRD such actual reasonable expense for that portion of the work that would not have had to be done if a License had not been granted, as determined by the Executive Director of the District, promptly upon rendition of bills therefor to the Adjacent Property Owner applicable to that portion of the work,. The parties agree that this Article VIII.F. applies only to work that must be performed due to the presence of a Licensed structure on an Easement Property, which would result in expenses that are in excess of expenses the MWRD would have customarily incurred had the Licensed structure not been there. This paragraph is subject to the dispute resolution mechanism in Article X of this Agreement.

#### ARTICLE IX.

##### **(Notice)**

Any notice herein provided to be given shall be deemed properly served if delivered in writing personally or mailed by registered or Certified mail, postage prepaid, return receipt requested or by such other means as is considered usual and customary under the circumstances at the time of a notice, to the MWRD in care of the Director of Engineering, 100 East Erie Street, Chicago, Illinois 60611, with copy to the MWRD's Attorney, or to the Adjacent Property Owner at the address provided on the application by the Adjacent Property Owner, or to such other persons or addresses as any Adjacent Property Owner may from time to time designate in writing, with a copy to the RRNA and its counsel.

#### ARTICLE X.

##### **(Dispute Resolution)**

When any dispute arises concerning the meaning or interpretation of, or compliance with any provision of this Agreement, the interested parties shall meet within twenty-one (21) days of

written notice of such dispute, in a good faith effort to resolve such dispute. If the interested parties fail to reach a satisfactory resolution of the dispute, the interested parties shall engage in nonbinding mediation, through the rules of an organization such as JAMS or Endispute, with all interested parties to share equally in the costs of such mediation. If the interested parties fail to reach a satisfactory resolution of the dispute through mediation, then any interested party may bring an appropriate motion before the Circuit Court of Cook County, Chancery Division, or any successor thereof, for relief, and the Circuit Court of Cook County shall retain jurisdiction to enforce this Agreement.

#### ARTICLE XI.

##### **(No Representations or Warranties)**

The Defendants expressly acknowledge that the MWRD has made no representations, warranties, express or implied, as to the adequacy, fitness or condition of the land or any improvements upon the Easement Property and Adjacent Property Owner acknowledge that same is used and occupied “as is,” “as found” and “with all faults.”

#### ARTICLE XII.

##### **(Release)**

A. In consideration of the aforesaid, the parties to the Lawsuits each agree to dismiss their respective Lawsuits with prejudice, and all parties to the Lawsuits each agree that they shall not institute or maintain any action or proceedings of any kind or character regarding ownership of the Riverbank or any matters that were raised or could have been raised in the Lawsuits, unless this Agreement and the Consent Judgment to be entered in connection with this Agreement are set aside or vacated by a final judgment of a court of competent jurisdiction.

B. The Adjacent Property Owners hereby release the MWRD, its Board members, officers, agents, directors, and employees from all claims, actions or causes of action arising out

of, or in any way related to any claims or causes of action that were or could have been raised in the Lawsuits except as herein stated and specifically reserved. The parties agree that no claims with respect to lateral support or subsidence were or could have been raised in the Lawsuits, and such claims are reserved. The MWRD hereby releases the Adjacent Property Owners, their heirs, agents, successors and assigns from all claims, actions or causes of action arising out of or in any way related to any claims or causes of action that were or could have been raised in the Lawsuits except as herein stated and specifically reserved.

C. Nothing in the terms of this Agreement shall be interpreted as releasing or barring any known or unknown claims that an Adjacent Property Owner may bring against the MWRD with respect to lateral support or subsidence or other damage allegedly caused by the MWRD with respect to the Adjacent Property.

#### ARTICLE XIII.

##### **(Attorneys' Fees and Costs)**

The parties agree that each of them shall pay and defray any and all fees and costs arising from the actions of its own counsel in connection with the complaint, this Agreement and the matters and documents referred to herein, the filing of a dismissal of the complaint, and all related matters; and shall save, indemnify, and hold harmless the other of and from any further responsibility for such fees and costs.

#### ARTICLE XIV.

##### **(Agreement to Consent Judgment)**

Each of the parties agree to execute and acknowledge, upon the effective date of this agreement, the legal documents necessary or proper to effectuate this settlement, to present to the Circuit Court of Cook County, Illinois an Agreed Motion for Entry of a Consent Judgment that shall fully incorporate the terms and conditions of this Settlement Agreement and to cooperate to

achieve entry of said Consent Judgment. Such Consent Judgment shall include a recitation that the Court finds that the Adjacent Property Owners have a valid defeasible easement interest in Easement Property pursuant to the 1903 Deed, as clarified by the Court's ruling on the parties' cross-motions for summary judgment in the lawsuits in the 9/6/06 Decision, and that this Agreement is a reasonable and appropriate compromise and settlement of the parties' respective claims and defenses under that 1903 Deed and the Lawsuits. All parties also agree to execute at any time as the need arises all documents that may be necessary to carry out the purposes of this Agreement. Each person signing this agreement represents and warrants that he/she has the authority to bind the party or parties for which he/she is signing.

#### ARTICLE XV.

##### **(General Provisions)**

A. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

B. *De Minimis* Exemption. Notwithstanding anything in this Settlement Agreement to the contrary, if a Structure (improvement) existing as of the date of this Settlement Agreement is principally located on Adjacent Property and encroaches on the Riverbank by less than 2.5 feet, then such Structure (improvement) shall be considered as a "*de minimis*" encroachment, shall be considered as an Authorized Structure, but shall not be considered as a Structure for purposes of complying with any of the requirements of this Settlement Agreement pertaining to notice under Article IV.B.1; inspections and Engineer's Report under IV B. 2, 3, 4 and 5; annual Easement Administration Fee pursuant to Article V.A.; authorizations under Article V.B., C., D. and E.; and General Liability Insurance requirements under Article VIII.B. and C.



C. The parties have identified a wood garage at 2628 West Agatite, that encroaches approximately 12.11 feet onto the Riverbank from the Adjacent Property; a brick garage at 2806 West Eastwood that encroaches approximately 16-20 feet onto the Riverbank from the Adjacent Property; and a wood garage at 2854 West Giddings that encroaches approximately 7.97 feet onto the Riverbank from the Adjacent Property (the “Encroaching Garages”). The parties agree that these Encroaching Garages existed in their present locations prior to the filing of the Lawsuits. Based on a discrepancy in the appraisals of the Encroaching Garages and encroaching real property provided to the Court, the Court has recommended an annual rent for the Encroaching Garages, to be paid to the MWRD, as follows: 2628 West Agatite - \$150; 2806 West Eastwood - \$300; and 2854 West Giddings - \$150. The Parties agree with the Court’s recommendation, which is incorporated into and made a part of this Agreement. This annual rent for the Encroaching Garages may be increased only in the same manner as the Annual Easement Administration Fee may be increased as set forth in Article V.A. of this Agreement. This annual rent for the Encroaching Garages is in addition to any Annual Easement Administration Fee that may be due from the respective Adjacent Property Owners of the Encroaching Garages. These Encroaching Garages are not considered to be Licensed Structures and are not subject to any of the requirements of this Settlement Agreement pertaining to notice under Article IV.B.1; inspections and Engineer’s Report under IV B. 2, 3, 4 and 5; annual Easement Administration Fee pursuant to Article V.A.; authorizations under Article V.B., C., D. and E.; and General Liability Insurance requirements under Article VIII.B. and C. The Parties further agree that any other existing encroachments onto the Riverbank for Adjacent Property are subject to the *de minimis* exception in Article XV.6.

*[signature page to follow]*

**WHEREFORE**, the parties have caused this agreement to be executed on their respective behalf as of the dates below the signatures of the duly authorized representatives.

**ABEC GROUP OF PLAINTIFFS**

By: Its Duly Authorized  
Representative

\_\_\_\_\_  
Signed Name

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

\_\_\_\_\_  
Date

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

By: Its Duly Authorized Representative

\_\_\_\_\_  
Signed Name

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

\_\_\_\_\_  
Date

**CROWE GROUP OF  
PLAINTIFFS**

By: Its Duly Authorized  
Representative

\_\_\_\_\_  
Signed Name

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

\_\_\_\_\_  
Date

### **EXHIBIT LIST**

A copy of the recorded handwritten 1903 Deed	Exhibit A
A copy of the typewritten transcript of the 1903 Deed	Exhibit A(1)
Form License Agreement	Exhibit B
The legal description of the original 1903 conveyance	Exhibit C
The legal descriptions of each of the individual properties abutting or adjacent to any part of the 1903 conveyance	Exhibit D
Presumptively Reasonable Limitations	Exhibit E
Permits of which the parties are aware as of the effective date of this Agreement	Exhibit F

## **EXHIBIT E**

*(Limitations on APO Engineer's Report)*

1. Visual inspection only
2. No topographic survey required
3. No hydraulic analysis of the river required.

An example of an APO Engineer's Report acceptable in form to the MWRD is attached to and made a part of this Exhibit E.

# EXHIBIT F

**EXHIBIT F**

*(List of Required Permits)*

City of Chicago Department of Transportation Harbor Permit

Army Corps of Engineer's permit – see <http://www.lrc.usace.army.mil/co-r/illinois.htm>