

**SUPPLEMENTAL INFORMATION PURSUANT TO  
RULE 3(a) OF THE RULES OF THE COURT OF CHANCERY**

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: ***CITY OF WILMINGTON, a municipal corporation of the State of Delaware, and MICHAEL S. PURZYCKI, Mayor of the City of Wilmington v. VELDA C. JONES-POTTER, Treasurer of the City of Wilmington***
2. Date filed: August 28, 2019
3. Name and address of counsel for plaintiff:

**William E. Gamgort (No. 5011)**  
**YOUNG CONAWAY STARGATT & TAYLOR, LLP**  
**Rodney Square**  
**1000 N. King Street**  
**Wilmington, DE 19801**  
**(302) 576-3267**

4. Short statement and nature of claim asserted: **Action for declaratory judgment and injunctive relief.**
5. Substantive field of law involved (check one):

<input checked="" type="checkbox"/>	Administrative law	<input type="checkbox"/>	Labor law	<input type="checkbox"/>	Consent trust petitions
<input type="checkbox"/>	Commercial law	<input type="checkbox"/>	Real property	<input type="checkbox"/>	Partition
<input type="checkbox"/>	Constitutional law	<input type="checkbox"/>	348 Deed Restriction	<input type="checkbox"/>	Rapid Arbitration (Rules 96, 97)
<input type="checkbox"/>	Corporation law	<input type="checkbox"/>	Zoning	<input type="checkbox"/>	Other
<input type="checkbox"/>	Guardianships	<input type="checkbox"/>	Trusts, Wills and Estates		
<input type="checkbox"/>	Trade secrets/ trade mark/ or other intellectual property				
6. Related case(s), including any Register of Wills matters, which requires copies of all documents in this matter to be filed with the Register of Wills: **N/A**
7. Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):  
***10 Del. C. § 341; 10 Del. C. §§ 6501, et seq.***
8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought: **Temporary Restraining Order**
9. If the complaint seeks a TRO, summary proceedings, a preliminary injunction or expedited proceedings, check here **X**.  
(If #9 is checked, a Motion to Expedite must accompany the transaction.)
10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause: **X. In light of the Plaintiffs' request that this matter be resolved in an expedited manner and given that the matter is likely to be subject to significant public interest, Plaintiffs respectfully request that this matter not be assigned in the first instance to a Master in Chancery.**

/s/ William E. Gamgort  
William E. Gamgort (No. 5011)

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CITY OF WILMINGTON, a	)	
municipal corporation of the State of	)	
Delaware, and MICHAEL S.	)	
PURZYCKI, Mayor of the City of	)	Civil Action No.
Wilmington,	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
VELDA C. JONES-POTTER,	)	
Treasurer of the City of Wilmington	)	
	)	
<i>Defendant.</i>	)	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND**  
**INJUNCTIVE RELIEF**

For their Verified Complaint for Declaratory Judgment and Injunctive Relief against Treasurer Velda C. Jones-Potter, in her capacity as Treasurer of the City of Wilmington, Delaware (“Treasurer”), Plaintiffs City of Wilmington (“City”) and Michael S. Purzycki (“Mayor”), in his capacity as Mayor of the City of Wilmington, Delaware (collectively, City and Mayor are referred to herein as the “Plaintiffs”) state and allege as follows:

**NATURE OF THE ACTION**

1. The municipal government of the City of Wilmington is organized to provide important and essential services, facilities, and infrastructure for the residents of, and visitors to, the City of Wilmington. The guiding principles for the operation of the City are set forth in its Charter (the “Charter”) and municipal Code

(the “Wilmington Code”). In order for City government to perform its critical role, every officer and employee spread throughout multiple departments must contribute and work cooperatively under the provisions of the Charter and Wilmington Code and consistently with the instruction of the Mayor who serves as the City’s chief executive. (Charter § 4-100 – providing that the Mayor is the “chief executive officer of the city.”). This duty of cooperation is not merely aspirational, but rather is mandated by the Charter. (Charter §§ 8-400 and 8-401).

2. When a member of City government refuses to perform his/her Charter- and Code-mandated duties, threatens action beyond the scope of his/her duties, refuses to cooperate and communicate in a constructive manner with other City departments and the Mayor, ignores policies and directions from the Mayor, and purports to arrogate power to his/her department or office that has no basis in the law, such actions necessarily disrupt the City in conducting its business and performing its required and essential functions. Further, such actions result in expenses that are unnecessary if government officials comport themselves consistently with the duties of their office.

3. Unfortunately, the operations of the City are being disrupted by the actions of its current Treasurer in the manner detailed in this Complaint and the City is forced to pursue the extraordinary course of these legal proceedings before irreparable harm occurs. The Treasurer has attempted to deputize herself with

certain powers that the City Treasurer simply does not possess and has undertaken a course of politically- and personally-motivated action aimed at undermining the authority of the Mayor to function as the City's chief executive.

4. By way of this action, Plaintiffs seek declaratory judgments opining that:

(i) the Treasurer has no authority or duty under the Charter, Wilmington Code, or elsewhere to make any payment from the treasury of the City to a third party (a) without the subject invoice having been presented to the office of the Treasurer with an instruction for payment (*i.e.*, the Treasurer has no unilateral ability to decide without consultation with any other City officials to pay an invoice, approve such payment, or deliver such payment) or (b) over the objection of the Mayor who serves as the "chief executive officer of the city" (Charter § 4-100);

(ii) the Treasurer has no discretion or authority under the Charter, Wilmington Code, or elsewhere to refuse to execute, or delay the execution of, a bond anticipation note approved by City Council and the City's Bond Committee when the same is presented to her for signature;

(iii) the Treasurer has no discretion or authority under the Charter, Wilmington Code, or elsewhere to require an audit or other investigation of an

invoice submitted to her office for payment, or otherwise refuse to pay such invoice; and

(iv) the Mayor, as the City's "chief executive", has the authority to set fiscal policy for the City and all members of the City's Executive and Administrative Branch of government, including the Treasurer, must follow the fiscal policies set by the Mayor and any instruction or direction provided relating to the same.

5. Further, Plaintiffs seek permanent injunctions prohibiting the Treasurer from:

(i) making any payments from the City treasury that (a) have not been authorized and presented to her department for payment; and (a) over the express objection or instruction of the Mayor; and

(ii) issuing or enforcing orders or other directives from her office that impose extended custody on payments until an audit is conducted in the manner she prescribes or until she is otherwise satisfied.

## **PARTIES**

6. The City is a municipal corporation created and empowered pursuant to the Charter granted by the Delaware General Assembly.

7. Michael S. Purzycki is the elected Mayor of the City and brings this action in his capacity as the City's chief executive.

8. Velda C. Jones-Potter is the elected Treasurer of the City and is a party to this action only in her ministerial capacity as Treasurer.

## **JURISDICTION**

9. This Court is vested with subject-matter jurisdiction over the claims asserted pursuant to Article IV, § 10 of the Delaware Constitution, 10 *Del. C.* § 341, and 10 *Del. C.* §§ 6501-6502. The City has no adequate remedy at law. To the extent that any part of the City's requested relief can be characterized as legal in nature, this Court is permitted to exercise subject-matter jurisdiction over such claims under the equitable cleanup doctrine.

10. This Court has personal jurisdiction over the Treasurer as she is an elected municipal office holder of the City, a Delaware municipal corporation, and because the acts or occurrences which form the basis of the Plaintiffs' claims occurred within the State of Delaware.

## **FACTUAL BACKGROUND**

11. The Mayor was inaugurated into his post as the City's chief executive on January 3, 2017 and immediately set a course to reinvigorate the City, improve the health, safety, and welfare of its residents, and improve the City's financial position.

12. The Treasurer was also inaugurated into City government on January 3, 2017.

13. From the beginning of their service together on behalf of the City, the Treasurer has been vocal with respect her views on a variety of fiscal matters involving the City and the Mayor has always received and considered such opinions.

14. Unfortunately, as calendar year 2017 drew to a close, the activities of the Treasurer with respect to the Mayor and the operation of the City, more generally, turned from being merely critical dialog and discourse to blatant efforts to undermine the authority of the office of the Mayor to set policies for City government, in particular fiscal policy.<sup>1</sup>

15. The Treasurer has undertaken, and has threatened to continue, a course of conduct involving making payments from the City's treasury without authorization and contrary to express instruction from the Mayor, refusing to make payments that were authorized and instructed to be made (often under the guise that the same are merely being investigated at her "order" prior to payment) and threatening to refuse to perform, or otherwise delay, ministerial duties of the Treasurer's office that are critical for the operation of City government, its standing with creditors and vendors, and maintenance of the City's general fund

---

<sup>1</sup> The Treasurer's efforts to interfere with the Mayor's policies and directives and operation of City government coincidentally escalated at the time she and her husband, in their personal capacities, brought a failed *mandamus* action against the City relating to their residence. *See Potter v. City of Wilmington*, C.A. No. N17M-11-233 CEB, *aff'd*, C.A. No. 265, 2018.

balance for the protection and improvement of its bond rating. The Treasurer's activities, further detailed below, represent a significant, colorable threat of imminent harm to the City for which there is no remedy at law.

## **I. Wilmington Housing Partnership Corporation**

16. The Wilmington Housing Partnership Corporation ("WHPC") is a Delaware non-profit corporation and "public-private partnership" that was formed in 1989 with the objective of acquiring, rehabilitating, and selling single-family residences within distressed areas the City to stabilize such neighborhoods and improve the quality of life of City residents.

17. Historically, the WHPC has partially relied on funds from the City to finance its activities as well as funds received from private businesses, individuals and grants. In other words, the WHPC is a public-private partnership.

## **II. Loan from City for the Benefit of the WHPC**

18. In 2016, prior to the Mayor's inauguration, the City utilized its full faith and credit and ability to raise funds through the issuance of general obligation bonds to provide a source of financing for the WHPC's activities.

19. City Council enacted Ordinance No. 16-044, which was approved by then-Mayor Dennis P. Williams on September 1, 2016, authorizing the issuance of general obligation bonds in a principal amount of up to \$4,000,000 (the "2016 Bond Series").

20. The 2016 Bond Series was issued pursuant to a Credit Agreement by and between the City and JPMorgan Chase Bank N.A. (“Chase”) whereby Chase agreed to purchase the 2016 Bond Series (the “Credit Agreement”). *See* Credit Agreement attached hereto and incorporated herein as Exhibit A.

21. The Credit Agreement requires the City to make quarterly payments to Chase and all outstanding principal and interest is due in a balloon payment upon maturity on September 29, 2019.

22. All required payments due and owing under the Credit Agreement have been made and the City is not in default of such agreement.

23. The proceeds from the issuance of the 2016 Bond Series were advanced to the City pursuant to the Credit Agreement and then lent by the City to the WHPC pursuant to a Loan Agreement (the “WHPC Loan”). *See* WHPC Loan Agreement attached hereto and incorporated herein as Exhibit B.

24. The WHPC used the WHPC Loan to acquire and rehabilitate residences that it intended to later sell and planned to utilize any profits from such sales to repay the debt represented by the WHPC Loan.

25. WHPC failed to make certain payments due and owing the City pursuant to the terms of the WHPC Loan and the City, at the Mayor’s direction, has taken over management of several of the construction projects undertaken by

the WHPC to ensure that the projects are completed because they are critical to the communities in which they lie.

26. As of issuance of the City's Comprehensive Annual Report for the fiscal year that ended on June 30, 2018, the balance of the WHPC Loan was \$3,425,844.

**III. The Treasurer "Schedules" a Payment Under the Credit Agreement Without Consulting the Mayor, Without Authorization and Over the Objection of the Mayor**

27. On March 8, 2019, the Treasurer advised the Mayor by email that she "intends" to pre-pay the 3.4 Million obligation to J.P. Morgan Chase prior to its maturity on September 29, 2019. Eleven days later, on March 19, 2019, the Treasurer issued a press release announcing her desire to pay the \$3.4 million dollars owed from fund balance rather than refinancing that amount, falsely characterizing the Mayor's plan as a "tax increase." *See* the March 8, 2019 email and March 19, 2019 press release attached hereto and incorporated herein as Exhibit C.

28. Less than a month later, despite there being no principal payment due and owing from the City to Chase under the Credit Agreement and such Credit Agreement not maturing until September 29, 2019, the Treasurer scaled back her plan to pay the full 3.4 million dollars of the loan, issuing a public press release (the "Press Release"), dated April 8, 2019, in which she wrote ". . . the Treasurer

announced her Office scheduled a \$1.2MM payment to Chase Bank, relative to the Wilmington Housing Partnership default loan, which will be booked against a \$1.2MM appropriation in debt service budgeted this current fiscal year, 2019.” The Treasurer continued in the Press Release to explain that she believes she has the “authority and duty” to make such payment and that the payment on such obligation (the Credit Agreement) is “supported by the City’s legal counsel.” *See* Press Release attached hereto and incorporated herein as Exhibit D. The purported “scheduling” of the payment described in the Press Release, which was performed without the Treasurer or anyone from her office consulting with Mayor or any other City department, was a unilateral and unauthorized act.

29. In the April 8, 2019 press release, the Treasurer claimed to have scheduled the \$1.2 million payment despite the fact that no City department or the Mayor approved such payment or instructed the Treasurer to make the same. In fact, the Treasurer acknowledged in the Press Release that City Council had not approved such payment, which was in fact proposed in an ordinance that was never passed by Council (Ordinance No. 19-008), but contended that Council need not approve the same for the Treasurer to have authority to deliver such payment. This position taken by the Treasurer is directly contradicted by the express terms of the Charter and greatly exceeds the authority held by the Treasurer pursuant to the Charter and the Wilmington Code, and both the Mayor and the City Solicitor have

informed the Treasurer that she has no authority to make such payment and object to the same being made. *See* Mayor's Apr. 9, 2019 letter to Treasurer and enclosed Memorandum attached hereto and incorporated herein as Exhibit E. As of the date of this Complaint, Plaintiffs believe that the Treasurer steadfastly intends to make the "scheduled" payment of at least \$1.2 million, but more likely the entire \$3.4 million balance of the Credit Agreement, on or before its maturity on September 29, 2019, without authorization and over the Mayor's objection.

30. The Treasurer is a signatory on the City's treasury account and her public assertion that a \$1.2 million payment has been "scheduled" from such account and that she has authority to make the same represents an imminent and colorable threat of harm to Plaintiffs that can only be resolved through a declaratory judgment opining that the Treasurer has no duty or authority to make such payment and prevented through injunctive relief from this Court.

31. The Treasurer does not hide the political gamesmanship behind her announcement in the Press Release that she has "scheduled" a payment under the Credit Agreement in the amount of \$1.2 million. In the Press Release the Treasurer states that the payment of \$1.2 million that she has scheduled was a unilateral undertaking on her part without the approval of City Council or the Mayor and is "converse" to the "Mayor's plan."

32. The “Mayor’s plan” alluded to in the Press Release appears to be a reference to positions shared by the Mayor publically and in meetings with the Treasurer and other City officials as to his intent for addressing the Credit Agreement and WHPC Loan, including his instruction that the City explore restructuring the Credit Agreement set to mature on September 29, 2019. Specifically, the Mayor has instructed City officials to pursue on an expedited basis the satisfaction of the Credit Agreement on or before its maturity on September 29, 2019 through payment of the outstanding balance of the same with bond anticipation note(s) issued by the City.

33. To that end, on June 20, 2019, the City Council passed Substitute No. 1 to Ordinance No. 19-032 (“the “Ordinance”), which the Mayor approved on June 21, 2019, authorizing the issuance of up to \$15,600,000 aggregate principal amount of general obligation bonds and up to \$15,600,000 aggregate principal amount of general bond anticipation notes to, among other things, fund the desired refinancing of the \$3.4 million balance due on September 29, 2019 under the Credit Agreement. *See* Ordinance attached hereto and incorporated herein as Exhibit F.

34. Following passage of the Ordinance, the Mayor and the City Director of Finance requested that the Treasurer cooperatively participate in negotiations with lenders as to terms for a bond anticipation note that will be used to satisfy the

\$3.4 million balance of the Credit Agreement so that such terms can be proposed to the City's Bond Committee. To date, the Treasurer has ignored the invitations to participate in such negotiations and they are currently proceeding without her. Plaintiffs anticipate that such negotiations will result in terms for a bond anticipation note to fully satisfy the balance of the Credit Agreement being presented to the City's Bond Committee very shortly.

35. On August 26, 2019, the Mayor met with the Treasurer and implored her to cooperate and participate in the negotiations with respect to the bond anticipate note that, if approved, will be used to satisfy the Credit Agreement upon its maturity in a matter of weeks, particularly given that she is a member of the City's Bond Committee and should be playing an active role in the process. The Treasurer responded that she would not participate in the negotiations "and does not work that way." The Mayor then instructed the Treasurer to participate in the negotiations and the Treasurer responded that she does not work for the Mayor and would not follow the instruction to cooperatively participate in the process of negotiating the bond anticipation note.

36. Any bond anticipation note approved by the City's Bond Committee is required to be executed by the Mayor, City Auditor, and Treasurer. (Wilmington Code § 2-446). In light of the complete absence of cooperation on the Treasurer's part with respect to the negotiations of the bond anticipation note to

satisfy the balance of the Credit Agreement, as well as the Treasurer's history of statements threatening to make payments of \$1.2 million and \$3.4 million towards the WHPC loan without authorization and over the objection of the Mayor, as well as her conduct in making interest payments under such Credit Agreement without consulting the Mayor or any other City department, it is believed that if such note is presented to the Treasurer for her signature in the next few weeks that she will refuse to execute the same or otherwise delay execution of such instrument through a call for investigation or other delay that she has no authority to order or demand.

37. The Treasurer's obligation to execute any bond anticipation notes presented to her for her signature if they have been approved by the City's Bond Committee is non-discretionary, but rather ministerial. The Treasurer is obligated to sign any such note without delay. The threat that the Treasurer will refuse to sign upon presentment a bond anticipation note necessary to satisfy the Credit Agreement maturing on September 29, 2019, or otherwise delay her execution of the same through an unauthorized demand for investigation, audit or other inquiry, is colorable, significant and imminent and could result in a default under such instrument and cause significant financial harm to the City.

38. The Treasurer is entitled to voice criticism of the Mayor's policies, but such dissent or opposition must yield to her elected office's obligations to engage in cooperative conduct and to fulfill her Charter- and Wilmington Code-

mandated duties. Further, in her role as Treasurer she is obligated to undertake the performance of her duties in furtherance of the fiscal policies set by the Mayor and to cooperate in performing such duties, consistent with the authority held by her office as provided by the Charter and Wilmington Code.

39. Aside from the threatened payments, the Treasurer has already made several unauthorized interest payments under the Credit Agreement over the past year without first consulting with the Mayor or any City department.

40. City Council has not passed an appropriation authorizing a payment of \$1.2 million or \$3.4 million under the Credit Agreement, and further, the Mayor does not approve such payment and as the City's "chief executive" desires that such funds remain in the City's treasury account.

#### **IV. The Treasurer Refuses to Pay Authorized Invoices With Respect to WHPC**

41. In addition to the problems created by the Treasurer's action and inaction relating to the Credit Agreement and Ordinance, she has undertaken other action which also negatively impacts the operation of the City.

42. Third-party invoices relating to work contracted for WHPC have been submitted to the Treasurer for payment, totaling at least \$102,716.00 (the "WHPC Invoices"). *See* the WHPC Invoices attached hereto and incorporated herein as Exhibit G.

43. On July 31, 2019, the Treasurer issued Order 2019-1 directing the City treasury staff to “maintain custody” of all payments associated with WHPC, including those relating to the WHPC Invoices. The Treasurer took further “exception” to the Mayor and City Council Finance Committee’s actions in a memorandum submitted on August 1, 2019, in which she states that the Mayor and the City Council Finance Committee Chair are attempting to “forcibly control what has been customarily managed by the City Treasurer.” *See* August 1, 2019 Memorandum attached hereto and incorporated herein as Exhibit H.

44. On August 8, 2019, the Treasurer notified the City’s Director of Finance that pursuant to Order 2019-1 she was maintaining custody of the WHPC Invoices and ordering that the City “maintain custody of all payments associated with the [Wilmington Housing Partnership] Corporation pending the attestation of the accuracy and compliance of the same by the City’s Internal Auditor which shall be substantiated by interviews of the City’s department originating the payments, the Procurement and Accounting Divisions of the City’s Finance Department, the City’s Law Department, and/or any related party of interest; and/or performing procedures necessary to assure compliance and accuracy of payments to the [Wilmington Housing Partnership] Corporation and render opinion of same.” *See* August 8, 2019 letter attached hereto and incorporated herein as Exhibit I.

45. The Treasurer has no duty or authority to withhold payment of the WHPC Invoices, or to require an audit or investigation of the same prior to their payment and has defaulted in her duty by not paying the same promptly upon presentment. The Treasurer's failure to pay the WHPC Invoices is interfering with work the City must complete pursuant to contracts and represents a colorable and imminent threat of harm to the City.

**V. The Treasurer Also Refuses to Pay Authorized Invoices Relating to the City's Cable Television Franchise Agreement**

46. The City entered into a Lease Agreement on June 24, 2019 (the "Lease Agreement") with Lancaster Associates, LLC whereby the City agreed to lease certain premises from Lancaster Associates relating to the operation of a cable television channel.

47. Three invoices from Lancaster Associates, LLC, representing rent owing under the Lease Agreement, were delivered to the City, approved and presented to the Treasurer's office for payment (collectively, the "Lease Invoices"). *See* Lease Invoices attached hereto and incorporated herein as Exhibit J.

48. On August 14, 2019, the Treasurer issued Order 2019-2 in which she "orders" the Treasury "to maintain custody of all payments associated with the [Lease Agreement] pending the attestation of the accuracy and compliance of the same by the City's Internal Auditor which shall be substantiated by interviews of

the City department originating the payments, the Procurement and Accounting Divisions of the City's Finance Department, the City's Law Department, and/or any related party of interest; and/or performing procedures necessary to assure compliance and accuracy of payments associated with [property leases associated with third-party operations under the City's cable television Franchise Agreement] and render opinion of same.”<sup>2</sup> *See* Order 2019-2 and attachments attached hereto and incorporated herein as Exhibit K.

49. On August 16, 2019, the City Auditor notified Treasurer that under the authority granted the City Auditor in the Charter and Wilmington Code, and based on the exercise of his own independent judgment and discretion, the City's Auditing Department is “declining [Treasurer's] request for an engagement related to the subject matter of Order 2019-2.” *See* August 16, 2019 letter attached hereto and incorporated herein as Exhibit L.

50. Despite the Lease Invoices having been approved for payment and the City Auditor's declination of the Treasurer's request for an audit of said invoices, the Treasurer has refused to release three checks that have already been cut for such purpose (check numbers 182992 for \$6,700.00; 182991 for \$20,100.00; and 183738 for \$11,700.00) and the Lease Invoices are past due and owing by the City.

---

<sup>2</sup> Coincidentally, upon information and belief, the Treasurer's family had personal interests in the operations of this station and at present are actively encouraging the public to “make the switch” from the City-supported station to a competing station.

51. On August 20, 2019, the President of City Council wrote to the Treasurer and requested that she confirm that payment of the Lease Invoices will be made promptly in view of the City Auditor's August 16, 2019 statement that his office had declined the Treasurer's request for an audit of such invoices and explained that the delay in payment was disrupting the operations of the City. *See* August 20, 2019 email attached hereto and incorporated herein as Exhibit M. The Treasurer never responded to the foregoing request for confirmation from the President of City Council that payment of the Lease Invoices will be made promptly.

52. The Treasurer has no duty or authority to withhold payment of the Lease Invoices, or to require an audit or investigation of the same prior to payment, and has defaulted in her duty by not paying the same promptly upon presentment. The Treasurer's failure to pay the Lease Invoices represents a colorable and imminent threat of harm to the City.

## **APPLICABLE LAW**

### **I. The Treasurer's Role in City Government**

53. The Treasurer's role in City government is defined by the Charter and Wilmington Code and is largely administrative or advisory in nature.

54. The City Treasurer is a member of the City's Executive and Administrative branch of government as provided for in the Charter (Charter §§ 3-

100 and 3-202; Charter Article VI, Ch. 2). Charter § 3-202, which provides for election of the City Treasurer every four years, is contained within an Article relating to the organization of the City's Executive and Administrative Branch and within a chapter regarding the election or appointment of the following members of the Executive and Administrative Branch: (1) the Mayor; (2) the City Auditor; (3) the City Treasurer; (4) the City Solicitor; (5) the Chief of Staff; (6) the Chief of Police; (7) the Chief of Fire; (8) the Director of Commerce; (9) the Commissioner of Public Works; (10) the Director of Parks and Recreation; (11) the Commissioner of Licenses and Inspections; (12) the Director of Finance; (13) the Director of Planning and Development; (14) the Director of Human Resources; (15) the members of all boards and commissions; and (16) the officers of all boards and commissions.

55. Charter § 4-100 provides that “[t]he mayor shall be the chief executive officer of the city” and “shall be responsible for the conduct of the executive and administrative work of the city ....” The Mayor directs and makes the fiscal policy decisions for the City's Executive and Administrative Branch. The City Treasurer, like any other City executive department head, does not have the authority to act unilaterally regarding policy matters and must defer to the Mayor.

56. The City Treasurer's duties under the Charter and Wilmington Code are discrete and narrow and include such responsibilities as: (1) receiving daily funds and making deposits (Charter § 6-200); (2) making reports of all receipts and deposits (Charter § 6-200); (3) paying money out of the City Treasury (including payroll checks) upon order of the Auditing Department (Charter §§ 6-201 and 8-101); (4) furnishing a list to the Director of Finance of all City securities and their place of safekeeping (Charter § 8-105); (5) redeeming or purchasing City-issued bonds (as authorized by City Council and the City's Bond Committee) (Charter § 6-202); (6) serving as custodian of certain pension funds (Ch. 39 of the City Code); (7) withholding pension contributions from employees' salaries; and (8) serving on various committees, commissions, and boards, such as the Bond Committee and the Board of Pensions and Retirement. Neither the Charter nor the Wilmington Code provide the City Treasurer with an overarching policy-making role regarding the use or disbursement of City funds.

57. Specifically, with respect to authority to transmit City funds from the treasury to third parties, the City Treasurer's role is administrative or ministerial in nature and the Treasurer possesses no authority to exercise discretion to: (i) transmit City funds to a third party (a) over the objection of the Mayor or (b) without such payment being authorized and first presented to the Treasurer's office for payment (*i.e.*, the Treasurer has no unilateral ability to decide without

consulting with any other City officials to pay an invoice, to approve such payment and to deliver such payment); or (ii) refuse to disburse from the City's treasury a duly authorized payment.

58. Further, neither the Charter nor Wilmington Code provide the Treasurer with authority to require an audit of, or otherwise investigate, delay or withhold, timely payment of any invoices authorized and presented to her office for payment.

59. The narrow duties of the City Treasurer with respect to City funds starkly contrast with the broad authority and comprehensive duties of the City's Director of Finance, further demonstrating the ministerial nature of the Treasurer's role. Among other things, the Director of Finance is charged with: (1) establishing a general accounting system for the City, including complete supervision over the keeping of a detailed accounting record and supervising the accounting for all moneys received and receivable by the City (Charter § 6-101); (2) preparing and supplying to the Mayor such information as will enable the Mayor to keep acquainted with the financial conditions and prospective receipts and expenditures of the City (Charter § 6-101); (3) approving all contracts as to the availability of appropriated funds (Charter § 6-104); (4) reviewing and approving all requisitions (Charter § 6-105); and (5) having access to all records regarding appropriations made by the City (Charter § 6-107).

60. Likewise, the City's Auditing Department: (1) has the right to access the financial records of every City officer, department, board, or commission (Charter § 6-305); (2) may order payments out of the City treasury (Charter § 8-101); and (3) may require evidence justifying any requisition and may summon any City officer or employee to appear before it to testify regarding the requisition (Charter § 6-302). In contrast, with respect to payments being made by the City, the Treasurer has nothing more than a ministerial duty to pay monies out of the City Treasury upon direction to make the subject payment (Charter §§ 6-201 and 8-101).

61. The City's Office of Management and Budget plays a key advisory role to the Mayor with respect to the use of City funds, including preparation of all amendments and revisions to the operating and capital budgets, and monitoring every department's budget for expenditure control purposes. Critically, it is the Mayor, rather than the City Treasurer, that is charged by City Charter § 2-300 with submitting a proposed annual operating budget ordinance to City Council. The Treasurer's action, in threatening to make a payment from the City treasury over the objection of the Mayor and without the authority, is a blatant attempt to make an end-run around the right of the Mayor to set policy with respect to the City's budget and use of funds; it is an inappropriate political gesture that should be enjoined by this Court.

62. With respect to the City Treasurer's role on the City's Bond Committee, the Treasurer is one of three voting members (the others being the Mayor and the Chairman of City Council's Finance Committee). Any action of the Bond Committee must be taken by majority vote (Wilmington Code § 2-434). The Bond Committee selects financial advisors, financial institutions, and any other parties associated with bringing a bond issue to market (Wilmington Code § 2-456). However, it is the City Council that possesses the authority to authorize the issuance of general obligation bonds and to set the aggregate principal amount or maximum aggregate principal amount of such bonds via ordinance (*Id.*).

## **II. Process for Issuance of a Bond Anticipation Notes**

63. The City's ability to issue bonds to fund projects and initiatives is codified in the Wilmington Code at §§ 2-431 *et seq.*

64. The first step in the process for the City to issue general obligations bonds is for the City Council to pass a "supplemental" ordinance authorizing such bonds and the aggregate principal amount or maximum aggregate principal amount for the same. (Wilmington Code §§ 2-431 *et seq.* (the "general" bond ordinance); § 2-456 (discussion of supplemental bond ordinances)).

65. A supplemental bond ordinance will commonly provide for the issuance of bond "anticipation" notes, which serve as a temporary source of interim financing for the projects to be addressed by the ordinance until such time

as the bonds can be sold. If the subject ordinance calls for the issuance of bond anticipation notes, it will provide that the notes shall be sold as determined by resolution of the City's Bond Committee. The supplemental ordinance will further provide: (1) consistent with Wilmington Code, that the bond anticipation notes shall be executed in triplicate by Mayor, Treasurer, and the City Auditor (attested by the City Clerk); and, (2) that the appropriate officers of the City are hereby authorized and directed to take all such actions to carry out the intent of the general ordinance and the supplemental bond ordinance. (Wilmington Code § 2-456(a)).

66. Guided by the supplemental bond ordinance, the City's Bond Committee will then negotiate and pass a bond resolution to establish the following: (1) the financial institution(s) to purchase the bond anticipation notes; (2) the purchase price for such notes; (3) the form of note purchase agreement (in substantial form); and, (4) all other terms and conditions for the notes.

67. Once the City's Bond Committee passes the bond resolution, the bond anticipation notes are prepared and presented to the Mayor, Treasurer, and City Auditor for their signatures. (Wilmington Code § 2-446).

**COUNT I – Declaratory Judgment and Injunctive Relief Relating to  
the Purportedly Scheduled \$1.2 Million Payment and  
\$3.4 Million Balance Due on September 29, 2019**

68. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

69. The Charter details the authority and role of the Treasurer and other City departments regarding the processing of an invoice calling for payment to a third party and the Treasurer has no authority to unilaterally approve, process and pay an invoice.

70. An actual, justiciable, and continuing dispute and controversy exists between Plaintiffs and the Treasurer with respect to the authority of the Treasurer to make the purportedly scheduled \$1.2 million payment announced in the Press Release.

71. Mayor has informed the Treasurer she has no authority to make the “scheduled” payment to Chase of \$1.2 million referenced in the Press Release and directed that such payment not be made.

72. The Treasurer has refused to acknowledge that she will comply with the Mayor’s instruction and, upon Plaintiffs’ information and belief, the Treasurer intends to make the threatened \$1.2 million payment that she purports to have scheduled. Given that the Treasurer is a signatory on the City’s bank account, she has the ability to follow through with the threat to make the unauthorized payment.

73. A judicial declaration is necessary to establish that the Treasurer has no authority to make the purportedly scheduled payment to Chase of \$1.2 million described in the Press Release or to pay any other portion of the \$3.4 million balance of the Credit Agreement due September 29, 2019 (except from the

authorized bond anticipation note(s) that are presently being negotiated) because the Treasurer has no authority to unilaterally authorize the same and such payments have not been otherwise authorized in accordance with the Charter and Wilmington Code. Further, a permanent injunction is required to prevent Treasurer from making such payments without authority.

74. Pursuant to 10 *Del. C.* § 6501 *et seq.* this Court is empowered and obligated to declare the rights and obligations of the parties and to grant further relief, including injunctive, as may be necessary.

75. Plaintiffs are entitled to a judicial declaration and permanent injunction as set forth below in their prayer for relief and have no adequate remedy at law.

**COUNT II – Declaratory Judgment and Injunctive Relief Relating to Mayor’s Authority to Direct That Any Payment Not Be Made**

76. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

77. The Charter and Wilmington Code detail the authority and role of the Treasurer and other City departments regarding the processing of an invoice calling for payment to a third party and the Treasurer possesses no authority to unilaterally approve, process and pay an invoice.

78. The Mayor, as the City’s chief executive, has exclusive authority to set all fiscal policy for the City and to instruct all City employees, elected and

otherwise, with respect to the same. In turn, all City employees, including the Treasurer, must abide by the Mayor's instruction with respect to fiscal matters, including specifically and without limitation, instruction to not make a payment to any party.

79. An actual, justiciable, and continuing dispute and controversy exists between Plaintiffs and the Treasurer with respect to the authority of the Treasurer regarding payments to be made using City funds, including without limitation the purportedly scheduled \$1.2 million payment announced in the Press Release.

80. The Treasurer has asserted publically that she believes she has the duty and authority to make the \$1.2 million payment announced in the Press Release or pay off any other portion of the \$3.4 million balance of the Credit Agreement currently due September 29, 2019, despite the Mayor objecting to such payments.

81. A judicial declaration is necessary to establish whether the Treasurer has authority to issue payments to third parties over the objection of the Mayor, including without limitation the purportedly scheduled \$1.2 million payment announced in the Press Release or any other payment towards the balance of the \$3.4 million due September 29, 2019 (except from the authorized bond anticipation note(s) that are presently being negotiated), regardless of whether the subject

payment has otherwise been authorized and presented to the Treasurer for payment.

82. Pursuant to 10 *Del. C.* § 6501 *et seq.*, this Court is empowered and obligated to declare the rights and obligations of the parties and to give further relief, including injunctive, as may be necessary.

83. Plaintiffs are entitled to a judicial declaration and permanent injunction as set forth below in its prayer for relief and have no adequate remedy at law.

**COUNT III – Declaratory Judgment Relating to Treasurer’s Authority To  
Make Payments, Generally**

84. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

85. The Charter and Wilmington Code detail the authority and role of the City Treasurer and other City departments regarding the processing of payments from City funds.

86. An actual, justiciable, and continuing dispute and controversy exists between Plaintiffs and the Treasurer with respect to the authority of the Treasurer regarding payments to be made using City funds.

87. A judicial declaration is necessary to establish whether the Treasurer has unilateral authority to schedule any payments using City funds where the

subject invoice relating to the same has not been presented to her department with an instruction for payment.

88. This controversy is real and adverse, and the issues involved are ripe for judicial determination because (i) the Treasurer has made several interest payments under the Credit Agreement without the same being submitted to her department with an instruction for payment and without consultation with the Mayor, and will likely make similar, unauthorized payments in the future without a declaratory judgment from this Court; (ii) the Treasurer has at various times threatened to make the \$1.2 million payment described in the Press Release and payoff the \$3.4 million balance of the Credit Agreement due September 29, 2019, without authorization, direction for payment and without consulting with the Mayor.

89. Pursuant to 10 *Del. C.* § 6501 *et seq.*, this Court is empowered and obligated to declare the rights and obligations of the parties with respect to the controversy at issue.

90. Plaintiffs are entitled to a judicial declaration as set forth below in its prayer for relief.

#### **COUNT IV – Declaratory Judgment**

91. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

92. The Charter and the Wilmington Code detail the responsibility and role of the Treasurer and other City departments with respect to City-issued bonds and any bond anticipation notes that will be executed in connection with the same.

93. An actual, justiciable, and continuing dispute and controversy exists between Plaintiffs and the Treasurer with respect to the responsibility of the Treasurer to promptly execute a bond anticipation note presented to her and which has been approved by City Council through ordinance and the City Bond Committee and to cooperatively participate in the process of negotiating terms for such note with prospective issuers.

94. Plaintiffs have reason to believe that the Treasurer will refuse to execute a bond anticipation note authorized by ordinance of City Council and the City's Bond Committee and that will be presented to her for signature within the next several weeks and that will serve to satisfy the outstanding balance of the Credit Agreement, or will otherwise delay execution of the same through calls for audit or investigation that she has no basis to compel, thus causing the City to default under the Credit Agreement scheduled to mature on September 29, 2019.

95. Under the Charter and Wilmington Code, the Treasurer is a required signatory of any bond anticipation note and is required to promptly execute any such notes that have been approved by the City's Bond Committee and presented to her for her signature.

96. The Treasurer has no authority to require an audit or investigation into any bond anticipation note and is required to promptly execute any such notes that have been approved by the City Council and City's Bond Committee (upon which she serves as a voting member) and presented for signature.

97. A judicial declaration is necessary to establish that the Treasurer has the non-discretionary, ministerial duty to promptly execute upon presentation any bond anticipation notes, and other documents necessary to effectuate the same, upon presentment so long as they were authorized by ordinance of City Council and approved by the City's Bond Committee.

98. Pursuant to 10 *Del. C.* § 6501 *et seq.*, this Court is empowered and obligated to declare the rights and obligations of the parties with respect to the controversy at issue.

99. Plaintiffs are entitled to a judicial declaration as set forth below in its prayer for relief.

#### **COUNT V – Declaratory Judgment**

100. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

101. The Charter and Wilmington Code detail the responsibility and role of the City Treasurer and other City departments regarding the processing of payments to third parties from the City's treasury.

102. An actual, justiciable, and continuing dispute and controversy exists between Plaintiffs and the Treasurer with respect to the responsibility of the Treasurer to pay authorized invoices that have been presented to the Treasurer's department for payment.

103. The Treasurer has issued orders indicating that she will not pay the duly authorized WHPC Invoices and Lease Invoices until the City Auditor performs audits and reports findings regarding the same in a manner that satisfies the Treasurer that such invoices are "proper".

104. The Treasurer has no authority to maintain custody of payments for the WHPC Invoices and Lease Invoices or otherwise withhold payment of the same until audits are conducted at her direction and to her satisfaction.

105. The City Auditor has rejected the Treasurer's "order" that his department conduct an audit regarding the Lease Invoices.

106. A judicial declaration is necessary to establish that the Treasurer has no discretionary authority to require an audit or other investigation into the WHPC Invoices, Lease Invoices or any other authorized invoices presented to her department for payment before such invoices will be paid or otherwise released from her custody.

107. Pursuant to 10 *Del. C.* § 6501 *et seq.*, this Court is empowered and obligated to declare the rights and obligations of the parties with respect to the controversy at issue.

108. Plaintiffs are entitled to a judicial declaration as set forth below in its prayer for relief.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs request judgment in their favor and against the Treasurer as follows:

1. An Order declaring that:
  - a. The Treasurer does not have the authority to make the \$1.2 million payment described in the Press Release because (i) the same was not properly authorized and presented to the Treasurer's department for payment; and, (ii) the Mayor has instructed that such payment not be made;
  - b. The Treasurer is required to promptly execute on behalf of the City without delay any bond anticipation notes, and related documentation, that have been approved by the City's Bond Committee;
  - c. The Treasurer has no authority to require investigations or audits into to any bond anticipation notes that were presented to her for

signature and that have been approved by the City's Bond Committee and has the ministerial obligation to sign the same promptly and without delay;

- d. The Treasurer is required to pay all invoices that have been duly authorized and presented to the Treasurer's department for payment unless the Mayor instructs that payment not be made;
- e. The Treasurer has no authority to require investigations or audits of any invoices presented to her department for payment and to withhold authorized payments until the same are completed to her satisfaction; and
- f. The Treasurer does not have the authority to unilaterally decide to make payments using City funds which are not authorized pursuant to the Charter and Wilmington Code and presented to her department for payment, and without consulting with the Mayor.

2. An Order granting permanent injunctive relief in favor of the

Plaintiffs that:

- a. Prohibits the Treasurer from making the \$1.2 million payment threatened in the Press Release or any other payment (including any other payments towards the balance of the Credit Agreement)

that is (i) not authorized and presented to her department for payment and (ii) subject to an order from the Mayor “not to pay”;

- b. Prohibits the Treasurer from enforcing, attempting to enforce, or otherwise seeking to give effect to Order 2019-1 and Order 2019-2; and
- c. Prohibits the Treasurer from entering further orders, in form or substance, which purport to maintain extended custody of authorized payments on the conditions set forth in or similar to Orders 2019-1 and Order 2019-2.

3. An Order granting an award of attorneys’ fees and costs incurred by Plaintiffs in pursuing this litigation.

4. An Order granting Plaintiffs such other and further relief as this Court deems just and equitable.

YOUNG CONAWAY STARGATT  
& TAYLOR, LLP



William E. Gamgort (#5011)

Jennifer M. Kinkus (#4289)

Rodney Square

1000 North King Street

Wilmington, DE 19801

(302) 576-3267

[wgamgort@ycst.com](mailto:wgamgort@ycst.com)

*Attorneys for Plaintiffs*

DATED: August 28, 2019

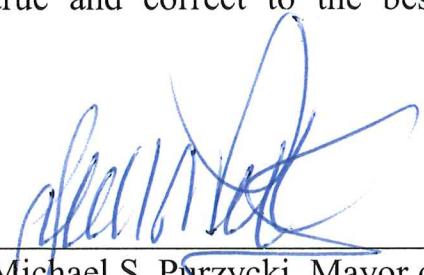
IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF WILMINGTON, a )  
municipal corporation of the State of )  
Delaware, and MICHAEL S. )  
PURZYCKI, Mayor of the City of ) Civil Action No. \_\_\_\_\_  
Wilmington, )  
Plaintiffs, )  
v. )  
VELDA C. JONES-POTTER, )  
Treasurer of the City of Wilmington )  
Defendant. )

**VERIFICATION**

STATE OF DELAWARE )  
 ) ss.  
COUNTY OF NEW CASTLE )

I, Michael S. Purzycki, state under oath that I am Mayor of the City of Wilmington, Delaware (the "City"), that I am authorized to execute this Verification on behalf of the City, that I have read and know the contents of the foregoing Verified Complaint For Declaratory Judgment and Injunctive Relief, and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

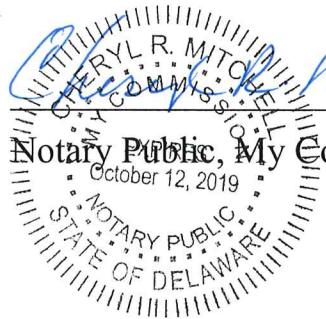


---

Michael S. Purzycki, Mayor of the  
City of Wilmington, Delaware

SWORN TO AND SUBSCRIBED BEFORE ME

This 18 day of August, 2019



Notary Public, My Commission Expires: 10/12/19

# **EXHIBIT A**



\$3,378,371.67

CREDIT AGREEMENT

dated as of September 29, 2016

between

CITY OF WILMINGTON, DELAWARE

and

JPMORGAN CHASE BANK, N.A.

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I Definitions.....</b>	1
SECTION 1.01     Defined Terms .....	1
SECTION 1.02     Terms Generally.....	7
SECTION 1.03     Accounting Terms; GAAP.....	7
<b>ARTICLE II The Credit.....</b>	7
SECTION 2.01     Disbursement of the Loan.....	7
SECTION 2.02     Fees.....	8
SECTION 2.03     Repayment of Loan; Evidence of Debt.....	8
SECTION 2.04     Prepayment of Loans.....	8
SECTION 2.05     Interest.....	8
SECTION 2.06     Alternate Rate of Interest .....	9
SECTION 2.07     Increased Costs.....	9
SECTION 2.08     Break Funding Payments.....	10
SECTION 2.09     Withholding Taxes; Gross-Up.....	10
<b>ARTICLE III Representations and Warranties.....</b>	11
SECTION 3.01     Organization; Powers .....	11
SECTION 3.02     Authorization; Enforceability.....	11
SECTION 3.03     Legislation .....	11
SECTION 3.04     Governmental Approvals; No Conflicts .....	11
SECTION 3.05     Financial Condition; No Material Adverse Change.....	11
SECTION 3.06     Litigation and Environmental Matters.....	12
SECTION 3.07     Compliance with Laws and Agreements.....	12
SECTION 3.08     Investment and Holding Company Status.....	12
SECTION 3.09     Taxes .....	12
SECTION 3.10     ERISA.....	12
SECTION 3.11     Disclosure .....	12
SECTION 3.12     Faith and Credit.....	13
SECTION 3.13     Anti-Corruption Laws and Sanctions.....	13
<b>ARTICLE IV Conditions .....</b>	13
SECTION 4.01     Effective Date.....	13
<b>ARTICLE V Affirmative Covenants .....</b>	14
SECTION 5.01     Financial Statements and Other Information.....	14
SECTION 5.02     Notices of Material Events .....	14
SECTION 5.03     Existence; Conduct of Business.....	14
SECTION 5.04     Payment of Obligations .....	15
SECTION 5.05     Books and Records; Inspection Rights .....	15
SECTION 5.06     Compliance with Laws .....	15
SECTION 5.07     Use of Proceeds.....	15
SECTION 5.08     Rating .....	15
<b>ARTICLE VI Negative Covenants .....</b>	15
SECTION 6.01     Governmental Regulation .....	15
SECTION 6.02     Anti-Corruption Law and Sanctions.....	15
<b>ARTICLE VII Events of Default.....</b>	16
<b>ARTICLE VIII Miscellaneous .....</b>	17
SECTION 8.01     Notices .....	17
SECTION 8.02     Waivers; Amendments.....	18

SECTION 8.03	Expenses; Indemnity; Damage Waiver.....	18
SECTION 8.04	Successors and Assigns.....	19
SECTION 8.05	Survival.....	20
SECTION 8.06	Counterparts; Integration; Effectiveness.....	20
SECTION 8.07	Severability.....	20
SECTION 8.08	Right of Setoff.....	20
SECTION 8.09	Governing Law; Jurisdiction; Consent to Service of Process.....	21
SECTION 8.10	Headings.....	21
SECTION 8.11	Confidentiality.....	21
SECTION 8.12	Interest Rate Limitation.....	22
SECTION 8.13	USA Patriot Notification.....	22
SECTION 8.14	<b>Waiver of Special Damages.</b> .....	22
SECTION 8.15	<b>WAIVER OF JURY TRIAL.....</b>	22

Exhibit A – Form of Semi-Annual Status Report

## CREDIT AGREEMENT

CREDIT AGREEMENT dated as of September 29, 2016 between the CITY OF WILMINGTON, Delaware, a municipal corporation of the State of Delaware and JPMORGAN CHASE BANK, N.A., a national banking association.

The parties hereto agree as follows:

### ARTICLE I

#### Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Adjusted LIBO Rate" means, for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted One Month LIBO Rate" means, an interest rate per annum equal to the sum of (i) 2.50% per annum plus (ii) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided further, that, if the LIBO Screen Rate at such time shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means this Credit Agreement, as the same may be amended, supplemented or modified from time to time.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means the City of Wilmington, Delaware, a municipal corporation.

"Break Funding Payment" means the payment owing by the Borrower to the Lender as set forth in Section 2.08 hereof.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with the determination of the LIBO Rate, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"CBFR" means when used in reference to the Loan, refers to whether such Loan is bearing interest at a rate determined by reference to the CB Floating Rate.

"CB Floating Rate" means the Prime Rate; provided that the CB Floating Rate shall never be less than the Adjusted One Month LIBOR Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CB Floating Rate due to a change in the Prime Rate or the Adjusted One Month LIBOR Rate shall be effective from and

including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

"Change in Law" means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law," regardless of the date enacted, adopted, issued or implemented.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commitment" means, the commitment of the Lender to make a Loan in the amount of Three Million Three Hundred Seventy-eight Thousand Three Hundred Seventy-one and 67/100 Dollars (\$3,378,371.67).

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06 or the financial statements referred to in Section 3.05(a).

"Dollars" or "\$" refers to lawful money of the United States of America.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 8.02).

"Electronic Means" means telecopy, email transmission or other similar means of communication capable of being evidenced by a paper copy.

"Electronic Signature" means any electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurodollar", means, with respect to any Interest Period, the sum of the applicable Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excluded Taxes" means, with respect to the Lender, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"Fixed Rate" means with respect to any Interest Period, the sum of the applicable Adjusted LIBO Rate plus 1.25% percent per annum.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Hazardous Materials" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Interest Payment Date" means the last day of each September, December, March and June.

"Interest Period" means with respect to the initial Interest Period, the period commencing on the Effective Date and ending on the last Business Day of the month in which such Effective Date occurs and, thereafter commencing on the first day of each calendar month and ending on the first day of the following calendar month, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month shall end on the last Business Day of the last calendar month of such Interest Period.

"Interpolated Rate" means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

"Lender" means JPMorgan Chase Bank, N.A., a national banking association.

"LIBO Rate" means, with respect to any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion (in each case the "LIBO Screen Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that (x) if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement and (y) if the LIBO Screen Rate shall not be available at such time for a period equal in length to such Interest Period (an "Impacted Interest Period") then the LIBO Rate [Eurodollar Rate] shall be the Interpolated Rate at such time; provided further that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a

vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" means the Loan in the principal sum of \$3,378,371.67 to be advanced in accordance with the provisions of this Agreement.

"Loan Documents" mean this Agreement, any promissory notes executed and delivered pursuant to Section 2.03(d) and any other documents or instruments executed in connection with this Agreement.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its obligations under this Agreement or (c) the rights of or benefits available to the Lender under this Agreement.

"Material Indebtedness" means Indebtedness (other than the Loan), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$5,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means September 29, 2019.

"Maximum Rate" means the lower of (a) 15% per annum or (b) the maximum interest rate permitted by applicable law.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, its successors and assigns.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

"Patriot Act" means the USA Patriot Act of 2001 (31 U.S.C. Section 5318).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Encumbrances" means with respect to each Project:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; and

(c) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its office at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The Prime Rate is a reference rate and is not necessarily the lowest rate.

"Projects" mean a series of projects by or sponsored by WHP or the Borrower constituting the renovation of existing residential housing units and the construction of new housing units in the Wilmington, Delaware environs.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, its successors and assigns.

"Sanctioned Country" means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors of the Federal Reserve System to which the Lender is subject, with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability

company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Borrower.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Transactions" means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of the Loan and the use of the proceeds thereof.

"WHP" means Wilmington Housing Partnership Corporation, a Delaware not-for-profit corporation.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**SECTION 1.02 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**SECTION 1.03 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender notifies the Borrower that the Lender request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

## ARTICLE II

### The Credit

**SECTION 2.01 Disbursement of the Loan.** Subject to the terms and conditions set forth herein, the Lender agrees to make the Loan to the Borrower on the Effective Date in an aggregate principal amount equal to the Commitment, subject to the terms and conditions set forth herein. Once repaid, the Borrower may not reborrow.

SECTION 2.02 Fees. The Borrower shall pay to the Lender a commitment fee in the amount of \$33,783.72 on or before the Effective Date.

SECTION 2.03 Repayment of Loan; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of the Loan on the Maturity Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from the Loan made by the Lender, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder.

(c) The entries made in the accounts maintained pursuant to paragraph (b) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(d) The Lender may request that the Loan be evidenced by a bond or promissory note. In such event, the Borrower shall execute and deliver to the Lender such evidence of indebtedness payable to the order of the Lender (or, if requested by the Lender, to the Lender and its registered assigns). Thereafter, the Loan evidenced by such bond or promissory note and interest thereon shall at all times (including after assignment pursuant to Section 8.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such bond or promissory note is registered, to such payee and its registered assigns).

(e) On the sale of each of the housing units involved in the Projects, the aggregate net proceeds of such sales shall be applied to the reduction or repayment of the outstanding principal balance of the Loan in accordance with Section 2.04. Payment shall be made as funds are available on the last day of an Interest Period, but not more frequently than monthly.

SECTION 2.04 Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay the Loan in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Lender by telephone (confirmed by telecopy) of any prepayment hereunder not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of the Loan to be prepaid. Each partial prepayment of the Loan shall be in the minimum amount of one hundred thousand dollars (\$100,000) or integral multiples of \$100,000 thereof. Prepayments shall be accompanied by accrued interest on the amount prepaid, to the extent required by Section 2.06, plus any amounts due under Section 2.08, plus in the case of a prepayment on other than the last day of an Interest Period, an administrative fee of \$250.00.

SECTION 2.05 Interest.

(a) The Loan shall bear interest on the unpaid principal amount at the Fixed Rate for the related Interest Period.

(b) Notwithstanding the foregoing, (i) if any required payment is not paid within ten (10) days after such payment is due, then, at the option of the Bank, Borrower shall pay a late charge equal to three percent (3.0%) of the amount of such payment, (ii) upon the occurrence of an Event of Default, and after maturity, the Loan shall bear interest, after as well as before judgment, at a rate per annum equal to three percent (3.0%) plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section.

(c) Accrued interest on the unpaid principal amount of the Loan calculated through the last day of the applicable quarter shall be payable in arrears on each Interest Payment Date and upon maturity of the Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of the Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any prepayment prior to the end of the current Interest Period therefor, accrued interest on the principal amount of such prepayment shall be payable on the effective date of such prepayment together with the Break Funding Payment in the amount determined pursuant to Section 2.08 hereof.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Prime Rate or Adjusted LIBO Rate shall be determined by the Lender and such determination shall be conclusive and binding absent manifest error.

#### SECTION 2.06 Alternate Rate of Interest. If prior to the commencement of any Interest Period:

(a) the Lender determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Lender determines (which determination shall be conclusive absent manifest error) that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining the Loan for such Interest Period;

then the Lender shall give notice thereof to the Borrower by telephone or telecopy as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, interest shall accrue on the unpaid principal balance of the Loan at the applicable CBFR Floating Rate minus 1.78%.

#### SECTION 2.07 Increased Costs.

(a) Increased Costs of Making or Maintaining Loan. If any Change in Law shall: (i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); (ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes, i.e. all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto) affecting this Agreement or the Loan made by the Lender; or (iii) subject the Lender to any taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) Capital Adequacy. If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loan made by the Lender to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the

Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificate of Amounts Due. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Demand For Compensation. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 2.08 Break Funding Payments.** In the event of (a) the prepayment of any principal owing on the Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), or (b) the failure to prepay on the date and in the amount specified by the Borrower in the notice delivered to Lender pursuant to Section 2.04(b) hereof on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such prepayment had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to the principal amount of such prepayment, for the period from the date of such event to the last day of the then current Interest Period therefor, over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

**SECTION 2.09 Withholding Taxes; Gross-Up.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.09), the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law or at the option of the Lender, timely reimburse it for, Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Lender within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes payable or paid by the Lender on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts

payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender on its own behalf or on behalf of the Lender shall be conclusive absent manifest error.

(d) Evidence of Payment. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

## ARTICLE III

### Representations and Warranties

The Borrower represents and warrants to the Lender that:

**SECTION 3.01 Organization; Powers.** The Borrower is a political subdivision of the State of Delaware, duly created and validly existing under the laws of the State of Delaware and has all requisite power and authority, corporate and otherwise, to execute and deliver, and perform all of its obligations, under this Agreement.

**SECTION 3.02 Authorization; Enforceability.** The Transactions are within the Borrower's powers and have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**SECTION 3.03 Legislation.** Any legislation of the State of Delaware, Wilmington City Council, or any other governmental authority necessary to fulfill in all material respects the terms and conditions of, and to carry out the Transactions contemplated hereby, are in full force and effect.

**SECTION 3.04 Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, or other documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

### SECTION 3.05 **Financial Condition; No Material Adverse Change.**

(a) The Borrower has heretofore furnished to the Lender its consolidated balance sheet and statements of income as of and for the fiscal year ended June 30, 2015, reported on by [McBride Shopa & Co., P.A.], independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments.

(b) Since June 30, 2015, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole.

**SECTION 3.06 Litigation and Environmental Matters.**

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

**SECTION 3.07 Compliance with Laws and Agreements.** The Borrower is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

**SECTION 3.08 Investment and Holding Company Status.** The Borrower is not (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

**SECTION 3.09 Taxes.** Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.10 ERISA.** No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.11 Disclosure.** The Borrower has disclosed to the Lender all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12 Faith and Credit. The obligations of the Borrower hereunder and any notes issued pursuant hereto constitute general obligations of the Borrower to which, the faith and credit of the Borrower is pledged.

SECTION 3.13 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of any the Borrower or Subsidiary, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds, Transaction or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

## ARTICLE IV

### Conditions

SECTION 4.01 Effective Date. The obligation of the Lender to make the Loan hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 8.02):

(a) The Lender (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Lender (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Lender shall have received a favorable written opinion (addressed to the Lender and dated the Effective Date) of counsel for the Borrower, and covering such other matters relating to the Borrower, this Agreement or the Transactions as the Lender shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.

(c) The Lender shall have received such documents and certificates as the Lender or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of the Transactions and any other legal matters relating to the Borrower, this Agreement or the Transactions, all in form and substance satisfactory to the Lender and its counsel.

(d) The Lender shall have received a certificate, dated the Effective Date and signed by the Financial Officer of the Borrower, confirming that (i) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the Effective Date; and (ii) at the time of and immediately after giving effect to such Loan no Default shall have occurred and be continuing.

(e) The Lender shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(f) The Lender shall have received a financial model in form and content satisfactory in all respects to the Lender with respect to each Project for which a Loan is requested.

(g) The Lender shall have received a true copy of the agreement or agreements with WHP entered into in connection with the Projects.

The Lender shall notify the Borrower of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligation of the Lender to make the Loan hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 8.02)

at or prior to 3:00 p.m., New York City time, on September 29, 2016 (and, in the event such conditions are not so satisfied or waived, the Commitment shall terminate at such time).

## ARTICLE V

### Affirmative Covenants

Until the Commitment has expired or been terminated and the principal of and interest on the Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lender that:

**SECTION 5.01 Financial Statements and Other Information.** The Borrower will furnish to the Lender:

(a) within one hundred eighty (180) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by McBride Shopa & Co., P.A. or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within forty-five (45) days after the end of each June 30 and December 31 of each year, a status report with respect to the progress of the Projects substantially in the form of Exhibit A hereto; and

(c) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or WHP, or compliance with the terms of this Agreement, as the Lender may reasonably request.

**SECTION 5.02 Notices of Material Events.** The Borrower will furnish to the Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or WHP that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; and

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**SECTION 5.03 Existence; Conduct of Business.** The Borrower will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

**SECTION 5.04 Payment of Obligations.** The Borrower will pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.05 Books and Records; Inspection Rights.** The Borrower will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will permit any representatives designated by the Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

**SECTION 5.06 Compliance with Laws.** The Borrower will (a) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, (b) perform in all material respects its obligations under material agreements to which it is a party, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (c) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**SECTION 5.07 Use of Proceeds.** The proceeds of the Loan will be used only to fund Projects in accordance with the terms of this Agreement. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations G, U and X.

**SECTION 5.08 Rating.** The Borrower shall at all times maintain an investment grade rating for its long term bonds. For purposes of this Section 5.08, investment grade rating shall mean a rating of Baa or better from Moody's or BBB or better from S&P.

## ARTICLE VI

### Negative Covenants

**SECTION 6.01 Governmental Regulation.** Until the Commitment has expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Lender that without the prior written consent of the Lender, the Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including without limitation, the US Office of Foreign Asset Control lists) that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower, or (b) fail to provide documentary and other evidence of the Borrower's identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower's identity or to comply with any applicable law or regulation, including without limitation, Section 236 of the Patriot Act.

**SECTION 6.02 Anti-Corruption Law and Sanctions.** The Borrower shall not use, and shall require that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of the Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or the European Union, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

## ARTICLE VII

### Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of the Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on the Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten (10) days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished by or on behalf of the Borrower pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to the Borrower's existence) or 5.08 or in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Lender to the Borrower;

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower shall become unable, admit in writing or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 shall be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Lender, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(m) any Loan Document shall fail to remain in full force and effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability thereof shall for any reason be asserted by the Borrower not to be a legal, valid and binding obligation of the Borrower;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Lender may, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, and (ii) declare the Loan then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loan so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitment shall automatically terminate and the principal of the Loan then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE VIII

### Miscellaneous

SECTION 8.01 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by Electronic Means, as follows:

if to the Borrower:

City of Wilmington  
800 French Street  
Wilmington, Delaware 19801-3573  
Attention: City Treasurer  
Telecopy No.: (302) 573-5568

with a copy to:

[Saul Ewing LLP  
222 Delaware Avenue, Suite 1200  
P. O. Box 1266  
Wilmington, Delaware 19899  
Attention: Timothy A. Frey, Esq.  
Telecopy No.: (302) 421-5867]

If to Lender:

JPMorgan Chase Bank, N.A.  
Community Development Banking  
601 Pennsylvania Avenue NW, 6th Floor  
Mail Code DC2-2504  
Washington, DC 20004-2638  
Attention: Brett Macleod, Executive Director

with a copy to:

JPMorgan Chase Bank, N.A.  
Legal Department  
4 New York Plaza, 21st Floor  
New York NY 10004-2413  
Attention: Michael R. Zients, Executive Director  
and Assistant General Counsel

(b) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

#### SECTION 8.02 Waivers; Amendments.

(a) No failure or delay by the Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other permitted right or power. The rights and remedies of the Lender hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Lender.

#### SECTION 8.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all fees, charges, wire charges and like costs customarily charged by the Lender in maintaining and administering its accounts generally, and (ii) all out-of-pocket expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loan made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loan.

(b) The Borrower shall indemnify the Lender, and each Related Party of the Lender (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or

prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

(d) All amounts due under this Section shall be payable promptly after written demand therefor.

#### SECTION 8.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loan at the time owing to it); provided that, except in the case of an assignment to an Affiliate of the Lender, the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld); and provided further that any consent of the Borrower otherwise required under this paragraph shall not be required if an Event of Default under clause (h) or (i) of Article VII has occurred and is continuing. Subject to notification of an assignment, the assignee shall be a party hereto and, to the extent of the interest assigned, have the rights and obligations of the Lender under this Agreement, and the Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement (and, in the case of an assignment covering all of the Lender's rights and obligations under this Agreement, the Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 8.03). Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(c) The Lender may, without the consent of the Borrower, sell participations to one or more banks or other entities (a "Participant") in all or a portion of the Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loan owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that the Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 8.02(b) that affects such Participant. Subject to paragraph (d) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.10, 2.11, 2.12 and 2.13 to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section.

(d) A Participant shall not be entitled to receive any greater payment under Section 2.06, 2.07, 2.08 or 2.09 than the Lender would have been entitled to receive with respect to the participation sold to

such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(e) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

**SECTION 8.05 Survival.** All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Lender and shall survive the execution and delivery of this Agreement and the making of the Loan, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitment has not expired or terminated. The provisions of Sections 2.10, 2.11, 2.12 and 2.13 and 8.03 and Article VII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

**SECTION 8.06 Counterparts; Integration; Effectiveness.**

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signature of the Borrower, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by Electronic Means shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words "execution," "signed," "signature," "delivery," and words of like import and in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act or any similar state laws based on the Uniform Electronic Transactions Act.

**SECTION 8.07 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 8.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the full extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Lender and such Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or

hereafter existing under this Agreement held by the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which the Lender may have.

**SECTION 8.09 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement shall be construed in accordance with and governed by the law of the State of Delaware.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of Delaware and of the United States District Court of the District of Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in the State of Delaware or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the full extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 8.10 Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**SECTION 8.11 Confidentiality.** The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**SECTION 8.12 Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the Maximum Rate, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to the Lender in respect of other periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Fixed Rate to the date of repayment, shall have been received by the Lender.

**SECTION 8.13 USA Patriot Notification.** The Lender hereby notifies the Borrower that pursuant to the requirements of Section 236 of the Patriot Act, is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that it will allow the Lender to identify the Borrower in accordance with the Patriot Act.

**SECTION 8.14 Waiver of Special Damages.** To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions, the Loan or the use of the proceeds thereof.

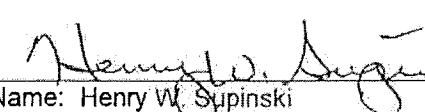
**SECTION 8.15 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[Signature Pages Follow]

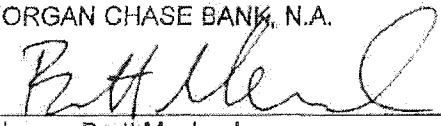
Doc #02-485265.5

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CITY OF WILMINGTON

By:  (Seal)  
Name: Henry W. Supinski  
Title: City Treasurer

JPMORGAN CHASE BANK, N.A.

By:  (Seal)  
Name: Brett Macleod  
Title: Authorized Officer

**EXHIBIT A**

## FORM OF SEMI-ANNUAL STATUS REPORT

## SEMI-ANNUAL STATUS REPORT

As of: June 30, \_\_\_\_\_ (insert year) OR  
Prepared by:

December 31, \_\_\_\_ (insert year)

# **EXHIBIT B**

AGREEMENT BETWEEN  
CITY OF WILMINGTON  
AND  
WILMINGTON HOUSING PARTNERSHIP, INC.  
FOR  
THE USE OF STRATEGIC HOUSING OPPORTUNITY FUNDS

THIS AGREEMENT ("Agreement") is made this 16<sup>th</sup> day of August, 2018 by and between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware ("City"), located at 800 French Street, Wilmington, Delaware 19801

-AND-

**WILMINGTON HOUSING PARTNERSHIP, INC.**, a Delaware non-profit corporation ("Developer"), having an office at 800 North French Street, Wilmington DE 19801.

WHEREAS, the Developer requested and was granted \$192,000.00 in funding from the City's Strategic Housing Opportunity Fund ("HOF") to assist with the construction of four (4) townhomes located at 527 Vandever Avenue and 529 Vandever Avenue, Wilmington DE 19802, being Tax Parcel Nos. 26-029.20-217 and 26-029.20-218 ("Properties");

WHEREAS, the Developer is willing to undertake certain responsibilities under the HOF Program to assure the City's Department of Real Estate and Housing ("Department") of compliance with all applicable Federal, State and local laws and regulations; and

WHEREAS, the City wishes to assist the project with the actual amount of HOF funds needed to complete the construction of the four (4) townhomes on the Properties; and

WHEREAS, the parties have agreed to the amount of the HOF funding being provided under this Agreement reflects the actual cost of the construction project.

NOW, THEREFORE, in accordance with the mutual promises herein contained, the parties agree as follows:

1. PROJECT; SCOPE OF WORK.

- a. Developer hereby agrees to construct on the Properties four (4) residential

townhomes ("Residential Units") that shall be sold to unaffiliated, third parties for homeownership. The construction and completion of the Residential Units is hereinafter referred to as the "Project."

b. Promptly following the acquisition of the Property, Developer shall cause a detailed scope of work and construction drawings to be prepared for the Project, which shall be subject to the review and approval of the Department. The Developer shall not commence construction on the Project unless and until the Department has reviewed and approved the scope of work and construction drawings ("Scope of Work").

c. Developer shall perform, by its agents or employees in a satisfactory manner, the Project in accordance with the Scope of Work.

d. Developer shall be responsible for management and maintenance of the Properties until all of the Residential Units are sold.

e. Upon the sale of any Residential Unit, Developer shall cause all sales proceeds to be paid to the City.

## 2. BUDGET.

a. Prior to commencing construction on the Project, Developer shall prepare a detailed budget and sources and uses for the Project, which shall be subject to the review and approval of the Department. The Developer shall not commence construction on the Project unless and until the Department has reviewed and approved of the budget and sources and uses for the Project ("Budget").

b. The Budget shall contain line items for (i) architectural, engineering and legal fees, (ii) Developer's fee, if applicable (capped at 10% of hard construction costs), (iii) projected sales prices for the residential units, (iv) real estate agent or broker's fees for the sale of the residential units (not to exceed 5.5% of the sales price), and (v) property management and maintenance costs for the Properties.

c. The Developer's fee, if applicable, for the Project shall be capped at 10% of the hard construction costs listed in the Budget. No acquisition costs or soft costs (such as architectural, engineering or legal costs) shall be considered in calculating the Developer's fee. The Developer's fee shall be fixed prior to commencing construction and shall not be increased if a change order increases the amount of hard costs for the Project.

d. The total cost of the Project shall not exceed \$852,887.00. In the event that projected Project costs exceed \$852,887.00 in the aggregate, then Developer shall immediately convey the Properties to the City.

3. TIME OF PERFORMANCE. The Developer will complete the Project on or before, \_\_\_\_\_, 20\_\_\_\_\_, unless the City grants an extension. Any and all extensions shall be made at the reasonable discretion of the City, and shall be in writing and signed by the respective parties.

4. GRANT; USE OF FUNDS; DISBURSEMENT OF FUNDS

a. The City agrees to provide the Developer with a grant in the amount of \$192,000.00 (One Hundred Ninety-Two Thousand Dollars) ("Grant"); provided, however, the amount of the Grant shall be adjusted to reflect the actual cost of the Project as described in the Budget. Notwithstanding anything to the contrary, the Grant shall not be increased in excess of \$192,000.00.

b. The Grant will be used solely to pay for the Project. The Grant may not be used to pay any costs not specifically required for the Project.

c. The Grant shall be disbursed in accordance with a mutually agreed upon schedule that is established during the review and approval process for the Budget. As a condition to receiving any disbursement of the Grant, Developer shall submit a numbered invoice to the City along with any supporting documentation reasonably requested by the City. The City shall have the right to inspect and verify the completion of any work prior to making any disbursement of the Grant.

d. All disbursements of the Grant shall be subject to a 10% holdback. The 10% holdback shall only be released upon the sale of all of the residential units comprising the Project.

e. Any and all funds unexpended at the end of the term of this Agreement shall, at the option of the City, revert to the City.

5. CONDITIONS ON USE OF FUNDS

a. Construction of the Residential Units on the Properties shall commence within thirty (30) days of the date of this Agreement. An extension of time may be granted at the discretion of the City. Any extension of time shall be in writing and signed by the respective parties.

b. The Developer shall not voluntarily create, cause or allow to be created any debt, lien, mortgage, charge or encumbrance against the Properties which in any way will impair or otherwise adversely affect the preservation of said Properties for the use or uses set out in this Agreement. The Developer will, from time to time, duly pay and discharge, or cause to be paid and discharged when the same become due, all taxes, assessments and other governmental charges which are lawfully imposed upon the Properties and which if unpaid may by law become a lien or charge upon said Properties and thereby impair or otherwise adversely affect the holding of said Properties for the use or uses set out in this Agreement.

c. The Developer shall submit to the City the following:

- i. With respect to the Properties, a copy of the fully executed deed(s) for the Properties;
- ii. Copies of a perimeter land survey, in form and substance satisfactory to the City, showing (1) the exterior boundaries of the Properties, (2) all easements on the Properties, and (3) all encroachments onto the Properties or from the Properties onto any adjoining property. The survey shall be currently certified by a registered surveyor to the effect that there are no easements or encroachments upon the Properties except as shown thereon;
- iii. Mortgagee title insurance policy, in form and substance satisfactory to the City that will be free from exceptions for mechanics and materialmen's liens;
- iv. Evidence satisfactory to the City that (1) the Project and the contemplated uses thereof are permitted by and comply with all applicable uses or other restrictions and requirements set forth in prior conveyances, zoning ordinances, or regulations, (2) that the required building permits and other permits have been obtained as required, and (3) that no environmental impact statement is required under any applicable law or the rules and regulations promulgated there under, or if any environmental impact statement is required, that such requirement has been met;
- v. A copy of the Developer's corporate documents;
- vi. A copy of the plans and specifications of construction of the Project determining the extent of rehabilitation for the City's approval;
- vii. The Developer's selection of the general contractor, architect, surveyor and/or engineer, all of whom shall be acceptable to the City;
- viii. Copies of certificates of occupancy issued for the Project evidencing that the Project meets appropriate housing and building code standards prior to occupancy; and
- ix. Such other documents as are reasonably required by the City.

d. Prior written consent shall be obtained from the City prior to any sale, transfer or other conveyance of title to a Residential Unit or the Properties by the Developer.

e. Prior to any sale, transfer or other conveyance of title to a Residential Unit or the Properties by the Developer, the Developer shall submit to the City, for its approval, a signed copy of the Sale(s) Agreement. Upon conveyance by the Developer, the Developer shall submit to the City a) a signed copy of the Settlement Sheet(s), and b) a copy of the fully executed deed(s) for the Residential Unit or Properties.

- i. The starting sale price for a Residential Unit will be based on current market values in the area. The Department of Real Estate and Housing must approve, in writing, the starting sale price submitted by the Developer.
- ii. Selling prices for the Residential Units may not be changed within

the first six (6) months of listing by more than 5% without the express written permission from the Department.

iii. This agreement shall commence on the Effective Date and continue in effect for **24 months** unless modified by mutual agreement of both parties, or may be terminated in whole or in part by either party with or without cause upon thirty (30) days written notice to the other party.

iv. Issuance of this Agreement shall not be construed as an approval of specific activities until receipt of such approval and notification. Developer agrees that the proposed activities are subject to change based on the results of the project review from the Planning Department and Department of Licenses and Inspections.

v. Notwithstanding anything else contained in this Agreement, funds made available hereunder may only be used for constructing the four townhomes on the Properties by the Developer. If funds made available hereunder are used for any other purpose it shall be deemed a breach of this Agreement.

## 6. BREACH AND WAIVER OF BREACH

a. For the purposes of this Agreement, the following shall constitute breach:

(i) the Developer shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement and Developer shall fail to cure such failure within thirty days after notice from the City or (ii) the Developer violates any of the covenants, terms or stipulations of this Agreement and fails to cure such violation within thirty (30) days after notice from the City.

b. The express or implied waiver of any provisions of this Agreement by the City shall not be construed to be a permanent modification of the terms of this Agreement.

c. In the event that any penalties are imposed by the Federal government as a result of either the type of activities undertaken pursuant to this Agreement or the manner in which said activities are carried out, the Developer shall be held responsible for any costs incurred (e.g., legal expenses or repayment), unless it can be demonstrated that the Developer's actions were expressly approved in writing by City; in which case, City shall bear the cost of any penalty and related expenses.

## 7. REMEDIES FOR BREACH. Upon breach the City may, at its option, and *in addition to* any and all other remedies afforded by law, elect to exercise any or all of the following remedies:

a. Seek reimbursement for all sums deemed by the City to have been improperly disbursed.

b. Proceed in a court of equity for specific performance, injunction, or other equitable remedy.

c. Terminate this Agreement immediately. All finished or unfinished

documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Developer under this Agreement shall become the City's property.

d. In any action, suit, matter or proceedings brought for the enforcement of this Agreement, to require the Developer to pay the City's reasonable attorney's fees of five percent (5%) of any amount decreed due the City if any. In all successful actions by the City in a court of equity for specific performance of this Agreement, the Developer shall pay the City's attorney's fees at such hourly rate as is reasonable for the area.

8. **PROPERTY STANDARDS.** Housing that is assisted with HOF funds must at a minimum follow all applicable local codes and zoning requirements.

9. **MARKETING PLAN.** The Developer is required to submit an affirmative marketing plan for City approval. The City has an established Affirmative Marketing Plan in compliance with the Title VIII of the Civil Rights Act of 1968 (**Fair Housing Act**). The City requires the same outreach efforts on the part of the Developer.

10. **EXCLUSIONS.** City and Developer agree that no funds made available under this Agreement are to be used as project-specific technical assistance and site control loans or project-specific seed money loans.

11. **CONFLICT OF INTEREST.** No person who is an employee, agent, consultant, official or appointed official of the City, who exercises or has exercised any function or responsibilities with respect to activities assisted with HOF funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOF assisted activity, or have an interest in any contract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

12. **ADMINISTRATION OF AGREEMENT.** The Developer shall consult with and inform the City project manager immediately with respect to all prospective changes, addenda and revisions in the Project's Scope of Work. The City must also be informed of the following Agreement matters:

- a. Delays
- b. Rejection of bids
- c. Awards
- d. Protest of awards
- e. Bidding, labor and Scope of Work disputes
- f. Claims for extra work

- g. Terminations for cause
- h. Violations of law
- i. Other disputes

13. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. If the Developer fails to perform its part of the Agreement by the time fixed in the Agreement for such performance the City may, at its election, terminate the Agreement.

14. NON-EMPLOYMENT RELATIONSHIP. The Developer acknowledges that its officers or employees are not employees of the City for any purpose, including Worker's Compensation. The Developer shall maintain appropriate insurance under the Worker's Compensation Act.

15. REPORTS AND INFORMATION. The Developer shall furnish the City information and/or periodic reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this Agreement. At a minimum, the Developer shall be expected to submit if so requested by the City:

- a. Original audits and management letters related to such audits as may be required under this Agreement.
- b. The amount of the HOF investment the unit or per unit.
- c. Records concerning the equal opportunity and fair housing efforts of the Developer containing
  - i. Documentation of the actions taken by the Developer to affirmatively further fair housing, including a copy of the Developer's affirmative marketing policy as may be required under this Agreement.
  - ii. Documentation of actions undertaken to meet the requirements as may be required under this Agreement concerning equal opportunity.

16. MONITORING AND COMPLIANCE. The City reserves the right to make inspections and inquiries concerning the Project as the City deems necessary to assure compliance with all laws, regulations and terms of this Agreement.

17. INDEMNIFICATION. The Developer shall indemnify, defend and save harmless the City, its agents and employees from all suits, actions, claims, demands, losses, expenses, and/or cost of every kind and description including reasonable attorney's fees to which the City may be subjected or put by reason of injury including death to persons or damage to property, resulting

from the manner or method employed by the Developer, or from omission, neglect, default, or fraud by the Developer, in performance of this Agreement, or any part thereof. Further, the Developer hereby assumes full responsibility for the daily operation of the Project to be performed hereunder and agrees to hold the City harmless from any and all liability, which may arise in connection with the operation of such daily activities.

18. AGREEMENTS. All subsequent agreements entered into by the Developer for the rendering of services funded in whole or part by this Agreement shall be in writing and:

- a. Shall incorporate all terms contained herein.
- b. Shall be monitored for compliance and performance by the Developer.

19. INSURANCE.

- a. Comprehensive General Liability Insurance.

i. The Developer shall purchase and maintain in full force and effect during the life of this Agreement, or any renewal or extension thereof, Comprehensive General Liability Insurance in the amount of not less than a single limit of Two Million Dollars (\$2,000,000.00) per occurrence combined for all damages arising out of bodily injury, including death, and property damage, which insurance shall cover the risks generally including in such a policy.

ii. Additionally, in connection with the rehabilitation or construction activities resulting from this Agreement, the Developer shall also have included the following coverage under its General Liability Insurance:

(A) Operations Liability Insurance;

(B) Hazard Insurance. The Developer shall purchase and maintain in full force and effect during the life of this Agreement of any renewal or extension thereof Hazard Insurance in the amount of the appraised value of the Property; and

(C) Flood Insurance. Flood Insurance, if any, required under this Agreement.

b. City As Insured. Each of the insurance policies required by this Agreement shall name the City as an additional insured.

c. Worker's Compensation. Except as otherwise provided by law, the Developer shall, at all times, maintain and keep in force such insurance as will protect it from claims under the Worker's Compensation Act.

d. Department's Project Manager Involvement. The Developer shall furnish

the Department's project manager with proof of insurance prior to the signing of any agreement indicating compliance with all of the above. The Developer shall maintain said insurance with insurance underwriters authorized to do business in the State of Delaware. The Developer agrees to notify the project manager in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which the Developer has knowledge. It is agreed that this policy is not subject to cancellation of or reduction in coverage until thirty (30) days prior written notice has been delivered to the Department's project manager.

20. NON-ASSIGNMENT. The Developer shall not assign, sell or convey any of the interest under this Agreement to any person without permission of the City. Any attempted assignment shall constitute grounds for immediate termination of this Agreement.

21. SUCCESSOR AND ASSIGNS. All of the covenants, provisions, terms and conditions of this Agreement and attachments thereto shall inure to the benefit and be binding upon the parties hereto, their successors and assigns.

22. PUBLICITY. The Developer shall mention or include the name of the City of Wilmington's Department of Real Estate and Housing in a conspicuous manner in any advertisement or publicity of any type pertaining to this program. The City must first approve such advertisement or publicity, which approval shall not be unreasonably withheld, prior to use.

23. COPYRIGHT. No report, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Developer.

24. SEVERABILITY. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement.

25. APPLICABLE LAW. The laws of the State of Delaware, City of Wilmington, and United States of America will govern this Agreement.

26. MODIFICATION OF TERMS. Any and all changes, modifications, or alterations shall be made in writing and must be signed by the City or its authorized delegate and the respective party that is authorized to sign on behalf of the Developer. Further, the Developer shall be held to the express terms of this Agreement and no change, modification or alteration of such terms shall be effective or valid absent a writing, setting forth the same, and signed by the aforementioned parties.

27. EQUAL OPPORTUNITY AND FAIR HOUSING.

a. No person in the United States shall on the grounds of race, color, sex, national origin, religion, or sexual orientation be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or

in part with HOF funds. In addition, the Developer shall comply with the following:

i. The requirements of the Fair Housing Act, 42 USC 3601-20, Title VI of the Civil Rights Act of 1964, 42 USC 2000d, and Executive Order 11063, as amended by Executive Order 12259, and the respective implementing regulations for each of these;

ii. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 USC 6101-07, and the prohibitions against discrimination against handicapped individuals under 504 of the Rehabilitation Act of 1973, 29 USC 794, the Americans With Disabilities Act, and their respective implementing regulations;

iii. The requirements of Executive Order 11246 and its implementing regulations;

iv. The requirements of Executive Orders 11625, 12432 and 12138. The Developers shall make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

b. The Developer, in marketing the units, shall affirmatively further fair housing which shall include providing information and otherwise attracting eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. The Developer shall inform the public, owners, and potential buyers about Federal fair housing laws and the Developer's affirmative marketing policy. City will provide, upon request, appropriate assistance in affirmative marketing procedures.

## 28. LABOR.

a. The construction contract(s) must provide that all laborers and mechanics employed in the development of any part of the housing shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 276a to 276a-5). Such laborers and mechanics shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 USC 327 to 332). <http://www.gpo.gov/davisbacon/DE.html>

b. The Developer will comply with the regulations issued under the above-referenced acts and with other Federal laws and regulations pertaining to labor standards, as applicable. The Developer must certify compliance with the provisions of this section before any payments will be made to the Developer under this Agreement.

c. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

d. The Developer must provide the Department with the following:

- i. copies of all construction contracts with general contractors and subcontractors for the Project;
- ii. letter from the prime contractor (on letterhead) stating the date that construction will begin on the Project;
- iii. the names and tax payer identification numbers for all general contractors and subcontractors for the Project; and
- iv. certified payroll reports and other supporting documentation for the Project as required by the Department.

29. HISTORIC AND ENVIRONMENTAL ASSESSMENT. The Developer must comply with all applicable environmental laws including but not limited to the provisions of the Architectural Barriers Act of 1968 and the Flood Disaster Protection Act of 1973. The Developer must comply with any environmental and/or historical preservation requirement established by the City's Department of Planning as a result of its review of a proposed project/activity performed pursuant to these Acts and other applicable laws and authorities.

30. LEAD-BASED PAINT. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD lead-based paint regulations, 24 CFR Part 35. The City will make the inspections and certifications as may be required under this Agreement.

31. FLOOD INSURANCE. Under the Flood Disaster Protection Act of 1973, 42 USC 4001-4128, HOF funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards, unless: (1) the community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the commitment.

32. SOLID WASTE DISPOSAL. Solid waste generated by the construction, rehabilitation (including building conversion), demolition or public improvement activity must be hauled to the solid waste management facility certified to accept such materials.

33. ENCUMBRANCES, TAXES AND ASSESSMENTS. The Developer will not voluntarily create, cause or allow to be created any debt, lien, mortgage, charge or encumbrance against the Properties which in any way will impair or otherwise adversely affect the preservation of said Properties for the use of uses set out in Section 2 hereof. The Developer will from time to time duly pay and discharge, or cause to be paid and discharged when the same become due, all taxes, assessments and other governmental charges which are lawfully imposed upon the Properties and which if unpaid may by law become a lien or charge upon said Properties and thereby impair or otherwise adversely affect the holding of said Properties for the use or uses set out in Section 2 hereof.

34. CONSTRUCTION CONTRACT COMPLIANCE. All construction work for the Project shall be performed, to the extent applicable, in accordance with, but not limited to:

- a. Equal Employment Opportunity Act
- b. Fair Labor Standards Act
- c. State of Delaware and City of Wilmington Laws
- d. List of debarred, suspended or ineligible contractors
- e. Architectural Barriers Codes
- f. Fire Safety Codes
- g. Building, Housing and Zoning Codes
- h. State of Delaware/EPA Standards Regarding Asbestos
- i. Lead-Based Paint Regulations

35. RELIGIOUS ORGANIZATIONS. HOF funds may be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOF funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOF funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to property to a wholly secular entity and the entity may participate in the HOF program. The entity may be an existing or newly established entity (which may be an entity established by the religious organization). The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Property.

36. RECORDS RETENTION

- a. All records, including bid documents, construction contracts, lease

agreements contracts and the records and reports referenced in Section 16 of this Agreement, must be retained by the Developer for three (3) years following the close-out of funds except that if any litigation, claim, negotiation, audit or other action has been started before the expiration of this period, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the regular period, whichever is later.

b. The City or any of their representatives, have the right of access to any pertinent books, documents, papers and other records of the Developer in order to make audits, examinations, excerpts and transcripts.

**37. PROHIBITION OF USE OF CITY OF WILMINGTON FUNDS FOR LOBBYING:**

The Developer certifies, to the best of its knowledge, that:

a. No City of Wilmington appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of City Council, an officer or employee of City, or an employee of a Member of City Council in connection with the awarding of City of Wilmington contract, the making of any City of Wilmington grant, the making of any City of Wilmington loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any City of Wilmington contract, grant, loan, or cooperative agreement.

b. If any funds other than City of Wilmington appropriated funds have been paid or will be paid to a person for influencing or attempting to influence an officer or employee of any agency, a Member of City Council, an officer or employee of City, or an employee of a Member of City Council in connection with any City of Wilmington contract, grant, loans, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

**38. AUDIT**

a. The Developer shall maintain accounts and records, including personnel,

property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be reasonably deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City. These records will be retained for three years after the completion of the Project.

b. The Developer shall make Audit records available to the City upon receipt from the auditor when request by the City.

39. TERMS AND CONDITIONS. This Agreement is subject to and incorporates (a) the provisions attached hereto as Attachment B, being entitled General and Conditions / DBE guidelines for use of HOF and any City of Wilmington funds, dated February 3, 2010, and containing 42 pages.

40. COMPLIANCE WITH LAWS. Developer agrees to comply with all applicable Federal, State and local laws, regulations and policies governing HOF funds.

41. CONSTRUCTION OF TERMS. Whenever the singular number is used in this Agreement and required by the context, the same shall include the plural and words in the plural shall include the singular; the masculine gender shall include the feminine and the neuter gender and, when the sense so indicates, words of the neuter gender shall refer to any gender; and the word person shall include corporations, firms, partnerships, trusts, associations or other such recognized business relationships.

42. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS. The Developer agrees to comply with all applicable Federal and State laws and regulations in the performance of this Agreement. The Developer also agrees to comply with all Federal and State laws and regulations, which become applicable to the Developer during the term of this Agreement.

43. EMINENT DOMAIN. No portion of the Property shall have been acquired by using, or threatening the use of, eminent domain.

44. NOTICE. Unless otherwise specifically indicated, all notices, demands, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been given if and when sent by facsimile, personally delivered or one (1) business day after delivery to a nationally recognized overnight delivery service, with evidence of receipt to the following addresses (or such other address as a party may hereafter designate for itself by notice to the other party)

a) If to the City of Wilmington:

City of Wilmington Department of Real Estate & Housing  
Louis L. Redding City/Cty Bldg., 7<sup>th</sup> Floor

800 French Street  
Wilmington DE 19801  
(302) 576-3000 (tel.)  
(302) 573-5588 (fax)

with a copy to:

City of Wilmington Law Department  
Louis L. Redding City/Cty Bldg., 9<sup>th</sup> Floor  
800 French Street  
Wilmington DE 19801  
(302) 576-2175 (tel.)  
(302) 571-4565 (fax)

b) If to the Developer:

Wilmington Housing Partnership  
800 French Street, 7<sup>th</sup> Floor  
Wilmington DE 19801  
(302) 576-3000 (tel.)  
(302) 571-4143 (fax)

---

[The remainder of this page was intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year written above.

WITNESS:

Ashley Christopher  
Name: Ashley Christopher  
Title Special Assistant to the Mayor

## WILMINGTON HOUSING PARTNERSHIP

By:  (SEAL)  
Steven T. Martin, Executive Director

STATE OF DELAWARE )  
 )  
COUNTY OF NEW CASTLE ) SS:

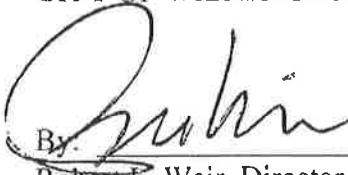
On this, the 16<sup>th</sup> day of August, 2018, before me, the undersigned officer, personally appeared Steven T. Martin, who acknowledged himself to be the Executive Director of Wilmington Housing Partnership, Inc., and that he as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in the name of Wilmington Housing Partnership, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[signatures continue on following page]

[signatures continued from previous page]

CITY OF WILMINGTON



By \_\_\_\_\_  
Robert L. Weir, Director,  
Department of Real Estate & Housing

STATE OF DELAWARE )  
 )  
COUNTY OF NEW CASTLE ) ss:  
 )

On this, the 16 day of August, 20 18, before me, the undersigned officer, personally appeared Robert L. Weir, who acknowledged himself to be the Director of the Department of Real Estate & Housing of the City of Wilmington, and that he as such Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in the name of the City of Wilmington.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Marilyn Amaro Valentin  
Notary Public  
Printed Name of Notary: Marilyn Amaro Valentin  
Commission Expires: 2/23/2019

MARILYN AMARO VALENTIN  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires February 23, 2019

# **EXHIBIT C**

## Ashley S. Christopher

---

**From:** Velda Jones-Potter  
**Sent:** Friday, March 8, 2019 12:45 PM  
**To:** Michael S. Purzycki  
**Subject:** Prepayment of JP Morgan Chase Obligation

Per your request, please see the following for an executive summary of the Treasury management plan for the City's Chase (WHP) liability.

Treasury intends to pre-pay the \$3.4 Million obligation to J.P. Morgan Chase prior to its September 29, 2019 maturity; and not roll-over or refinance in any way.

This action protects the City's credit standing and minimizes adverse financial impact to the City. It additionally avoids unbudgeted and valueless interest expenses considering representations made by the City in its CAFR that, there is expectation that \$2MM is uncollectible from WHP as of June 30, 2018. Given the current expectation, there is high likelihood the City will be on the hook for, at least, \$2MM or more when the bond matures in September of the current year.

### The following method is consistent with our plan to move forward:

Interfund loan of \$1.3MM from General to Special Fund, consistent with value-expectations currently represented by the City; expense \$1.2MM as debt service in RE&H, General Fund (101-191) in the current period accessing excess capacity in debt service expense-line; carry over \$0.9MM in the Special Fund and budget in FY'2020.

Fund Effect: This will have zero effect on the General Fund Balance. The Special Fund balance will increase to (\$0.9MM).

*\*The aforementioned assumes the economic substance of the transaction at year-end is appraised such that the 'Due from' receivable is deemed as having economic value commensurate with the \$1.3MM receivable from WHP.*

*Finance is advised to confirm the accounting treatment with external auditors.*

**Velda Jones-Potter | City Treasurer**

City of Wilmington  
Louis L. Redding City/County Building  
800 N. French Street | 5<sup>th</sup> Floor | Wilmington, Delaware 19801

Phone: 302-576-2480

• [treasurer@wilmingtonnde.gov](mailto:treasurer@wilmingtonnde.gov)



# Office of City Treasurer Velda Jones-Potter

## NEWS RELEASE

*Tuesday, March 19, 2019*

### **City Treasurer Opposes Mayor's Tax Increase to Pay \$3.4 Million Wilmington Housing Partnership Debt**

**Wilmington, Del.** - City Treasurer, Velda Jones-Potter updates on Wilmington Housing Partnership (WHP) stating Mayor Purzycki's proposed tax increase is unnecessary.

"The Mayor has authority to initiate collection from WHP," said Treasurer Jones-Potter. "And I urge him to do so rather than saddling citizens with higher taxes or more debt expense."

The Treasurer opposes Mayor Purzycki's plan to impose an 8.5% tax increase on Wilmington citizens to cover the defaulted \$3.4 Million WHP loan. She emphasized his threat comes without effort to collect outstanding debt from WHP (a non-profit corporation separate from the City). Instead, the Mayor has deemed the debt 'uncollectible.'

In a news release last week, the Administration stated, "*...the \$3.4 million is uncollectible by the City...WHP has other creditors that will demand to be satisfied prior to the City receiving any proceeds*" (Purzycki, 2019).

As other creditors secure their position and recoup what is owed them, the Treasurer's Office has seen Mayor Purzycki take no such action on behalf of the City.

Treasurer Jones-Potter also rejects Mayor Purzycki's proposal to refinance the WHP loan with long-term debt which would add nearly \$3.7 Million in interest and drive total cost to taxpayers over \$7 Million.

*As of December 31, 2018, the City Treasurer's Office has paid nearly \$90,000 in interest payments owed by WHP to keep the City from defaulting on its obligation to JP Morgan Chase. With the interest growing at \$10,000 per month, the Treasurer continues to stress the need to minimize the adverse impact of this debt on the City.*

The Treasurer's Office reiterates the City can fulfill its obligation to JP Morgan Chase with no tax increase or additional loans.

*The City fortunately maintains a solid cash position. The Treasurer has managed the City's cash and financing to reduce debt expenditures by \$1.2 Million, contributing to a \$2.9 Million projected surplus this fiscal year ending June 30, 2019*  
*(Source: Second Quarter WEFAC and Expenditure Review Board Reports).*

Treasurer Jones-Potter stands behind her decision to protect the City's credit standing and remove the \$3.4 Million debt burden.

###



City of Wilmington | 800 N. French Street, City Treasurer's Office-5th Floor , Wilmington, DE 19801

[Unsubscribe](#) [slmergler@wilmingtonnde.gov](mailto:slmergler@wilmingtonnde.gov)

[Update Profile](#) | [About our service provider](#)

Sent by treasurer@wilmingtonnde.gov in collaboration with

**Constant Contact®**

Try it free today

# **EXHIBIT D**



# Office of City Treasurer Velda Jones-Potter

---

## NEWS RELEASE

*Monday, April 8, 2019*

### **Treasurer Jones-Potter Proposes a Fiscal Year 2020 Operating Budget During Annual Treasury Review**

*Optimistic about economic outlook for the upcoming year*

Link to **Budget Presentation:** [Treasury Presentation](#)

**Wilmington, Del.** - During a meeting this evening, City Treasurer Velda Jones-Potter presented her budget for fiscal year 2020.

Jones-Potter's vision for the upcoming year included bolstering economic return and operational excellence and emphasized values including: Stewardship, Transparency, Equity and Prudence (STEP).

#### **Performance and 2020 Outlook**

During the presentation, Treasury highlighted a 1.1% year-to-year growth of the City's Pension Fund and \$1.2 Million interest expense savings from strategically structuring the City's 2018 Bond Issuance – additional savings will be realized in the upcoming 2020 fiscal year.

*In February, 2018, the Mayor issued a release insisting the City would go to the bond market for a full \$44MM which would have resulted in much more expense than the Treasurer's strategy which was ultimately enacted.*

### **Wilmington Housing Partnership Defaulted Loan**

Also debt-related, the Treasurer announced her Office scheduled a \$1.2MM payment to Chase Bank, relative to the Wilmington Housing Partnership default loan, which will be booked against a \$1.2MM appropriation in debt service budgeted this current fiscal year, 2019.

*City Council's Finance Committee, chaired by Councilman Freel, failed to consider an [Ordinance \(19-008\)](#) authorizing a \$1.3MM interfund loan which, together with the \$1.2MM payment, would have addressed \$2.5MM of the \$3.4MM loan which comes due in September this year. This Ordinance was properly referred to Committee by the full body of Council but was never placed on the Committee's agenda by the Chairman. This Ordinance exclusively applies to the \$1.3MM and is not necessary for the Treasurer to make the \$1.2MM payment, as is her authority and duty. This is supported by the City's legal counsel.*

Conversely, the Mayor's plan would saddle taxpayers with 20-year debt, ultimately costing over \$7 Million forcing future generations to pay the unsecured loan. External advisers cautioned the Mayor's plan would bring 'bad publicity' - this method is simply not good use of the City's tax-exempt issuing authority.

### **Capital Project Transparency Tool**

The Treasurer decided not to pursue funds for computer software this year after the Administration opted to broaden the focus of their OpenGov public finance tool to include a transparency module.

Last week, the Treasurer's Office shared an active, public link to the capital project tool which was later deactivated by the Administration. Jones-Potter rejects the Administration's accusation of impropriety emphasizing that the link included in the press release was set-up by the Administration to be accessible by the public. Two different links below (one public, one internal)

- [controlpanel.opengov.com/auth/users/sign\\_in](http://controlpanel.opengov.com/auth/users/sign_in) (Admin Use)
- [wilmingtonde.opengov.com/transparency](http://wilmingtonde.opengov.com/transparency) (Public Use - Shared in Release)

Treasurer's Office regrets that the Administration has since shut down access to the public website.

Jones-Potter further clarified a misconception which has been perpetuated by the News Journal. She explained neither the Mayor nor his Chief of Staff have authority to approve or deny an elected body's budget - not even their own. As she put it, "that is City Council's job through their budget ordinance. The Mayor's Chief of Staff has no more authority to obstruct an elected officer's budget request than she does to dictate to Council how they wish to authorize the use of the historic Fire Station - there is clearly confusion about roles and authority."

Jones-Potter continued on the dysfunction stating, “City Council should have equal opportunity to vet what both the Mayor and Treasurer represent are resources needed to discharge their fiduciary duties to the public during any given fiscal year”

Link to **Budget Ordinance Under Deliberation by Council** (sponsored by Councilman Bud Freel): [Click Here](#)

### **Positive Outlook**

Treasurer shared this is an optimistic time for her office and the City. She stated the City is experiencing a healthy regional economy and although there is some talk of rising interest rates, her Office continues to keep eyes peeled for saving opportunities and ways to increase the City's value.

####



# **EXHIBIT E**

# City of Wilmington



**MICHAEL S. PURZYCKI**  
**Mayor**

April 9, 2019

**HAND DELIVERED**

Velda Jones-Potter  
City Treasurer  
800 North French Street  
Wilmington, DE 19801

Dear Ms. Jones-Potter:

I am in receipt of a news release dated April 8, 2019, issued by your office, which contains a reference to an outstanding City loan that is associated with the operation of the Wilmington Housing Partnership. Specifically, you have indicated in the news release your intention to pay off \$1.2 million of a \$3.4 million loan to J.P. Morgan Chase.

You have no authority whatsoever under the City Charter or City Code to do so. You are infringing on the exclusive authority of the Mayor and City Council. I have attached the Opinion of the City Solicitor regarding the role of the City Treasurer and process for payments. You are hereby instructed not to make any payment in connection with this loan without prior authorization as required under the law.

I can assure you I will file court action seeking all remedies available to enforce this directive and to prohibit you from violating the City Charter and Code.

Sincerely,

A blue ink signature of Michael S. Purzycki, Mayor of Wilmington.

Michael S. Purzycki  
Mayor

**MEMORANDUM**

**TO:** Michael S. Purzycki, Mayor

**FROM:** Robert M. Goff Jr., City Solicitor  
Elizabeth D. Power, Senior Assistant City Solicitor

**DATE:** April 9, 2019

**RE:** Role of the City Treasurer and Process for Payments

Pursuant to City Charter Section 4-300, the Law Department “shall furnish legal advice to the mayor, to the council and to all officers, departments, boards and commissioners concerning any matter or thing arising in connection with the exercise of their official powers or the performance of their official duties . . .”

The Mayor has asked the Law Department to provide legal advice concerning (a) the scope of the role of the City Treasurer in the Charter and Code, specifically whether that role includes making or directing the general financial policy of the City; and (b) the process that the Charter prescribes for payments made out of the treasury by the City Treasurer.

In addition, on April 8, 2019, the Treasurer issued a press release in which she claimed the unilateral “authority and duty” to pay 1.2 million dollars of City debt. The release also asserted that it “is supported by the City’s legal counsel.” This memorandum of the City Solicitor comes to the opposite conclusion.

Section 8-410(4) of the City Charter provides that it “shall be unlawful for any officer, department, board or commission, except for the treasurer with the approval of council, to engage any attorney to represent him or it in any matter or thing relating to his or its public business without approval of the city solicitor.” To the extent that Treasurer’s view of her authority is derived from legal counsel she has consulted or employed outside of City’s Law Department, she does so unlawfully in contravention of the City Charter.

**The Role of the City Treasurer**

There is no need to guess what the City Treasurer’s duties and authority are. They are explicitly set forth and include: (1) receiving daily moneys and making deposits (Charter Section 6-200); (2) making reports of all receipts and deposits (Charter Section 6-200); (3) paying money out of the City treasury upon order of the Auditing Department (Charter Sections 6-201 and 8-101); (4) furnishing a list to the Director of Finance of all City securities and their place of safekeeping (Charter Section 8-105); (5) redeeming or purchasing bonds by the City (as authorized by City Council and the Bond Committee) (Charter Section 6-202); (6) serving as custodian of certain pension funds (various sections of Chapter 39 of the City Code); and (7) serving on various committees, commissions, and boards, such as the Bond Committee and the Board of Pensions and Retirement (various Charter and Code sections). The Charter and Code do not empower the City Treasurer with any unilateral policy-making role regarding the use of City funds. The Treasurer’s duty is simply to minister to the City’s treasury. In the absence of statutory support for a more expansive role, one may not be read into the law.

In contrast to the narrow and limited duties of the Treasurer are the broad authority and comprehensive duties of the Director of Finance. Among other things, the Director of Finance is charged with: (1) establishing a general accounting system for the City, including complete supervision over the keeping of a detailed accounting record and supervising the accounting for all moneys received and receivable by the City (Charter Section 6-101); (2) preparing and supplying to the Mayor such information as will enable the Mayor to keep acquainted with the financial conditions and prospective receipts and expenditures of the City (Charter Section 6-101); (3) approving all contracts as to the availability of appropriated funds (Charter Section 6-104); (4) reviewing and approving all requisitions (Charter Section 6-105); and (5) having access to all records regarding appropriations made by the City (Charter Section 6-107). The Director of Finance has the rule-making power to limit the authority of the Treasurer to make payments by check. (Charter Section 8-101(2)).

Similarly, the Auditing Department has expansive authority compared to the City Treasurer, and: (1) has the right to access the financial records of every City officer, department, board, or commission (Charter Section 6-305); (2) may order payments out of the City treasury (Charter Section 8-101); and (3) may require evidence justifying any requisition and may summon any City officer or employee to appear before it to testify regarding the requisition (Charter Section 6-302). The authority of the Auditing Department to order payments out of the City treasury and to require evidence justifying requisitions stands in stark contrast to the Treasurer's ministerial duty to pay moneys out of the City treasury only upon order of the Auditing Department. In addition, the Office of Management and Budget plays a key advisory role to the Mayor's Office, including preparation of the City's operating and capital budgets, and monitoring every department's budget for expenditure control (City Code Section 2-361). Finally, it is the Mayor, rather than the Treasurer, who is charged by Charter Section 2-300 with submitting a proposed annual operating budget ordinance to City Council under which all departments, including the Treasurer, must operate.

Most importantly, Charter Section 4-100 provides that “[t]he mayor shall be the chief executive officer of the city” and “shall be responsible for the conduct of the executive and administrative work of the city . . . .” Because of the broad authority inherent in that central function, the Mayor directs and makes the policy decisions for the City's Executive and Administrative Branch. The Treasurer is a member of the City's Executive and Administrative Branch (Article VI, Chapter 2 of the Charter and Charter Sections 3-100 and 3-202). Therefore, the City Treasurer, like any other department head, does not have the authority to act unilaterally regarding policy matters and must defer to the Mayor's Office regarding policy decisions.

### **Process Regarding Making Payments**

The City Charter requires the Mayor and all department heads, including the Treasurer, to communicate and cooperate when the law requires cooperation or there are overlapping functions. (Charter Sections 8-400 and 401). In the case of a payment from the treasury, the responsibilities of City Council, the Director of Finance and the Auditing Department intersect with the City Treasurer's, and the Charter requires the following series of cooperative and collaborative actions to occur:

- 1) An appropriation must be made by City Council (Charter Sections 2-300 and 2-301).
- 2) The Director of Finance must receive a requisition from a City officer, department, board, commission, or other agency for the payment and approve it. Once the Director approves the requisition, he or she sends it to the Auditing Department (Charter Section 6-105).

- 3) The Auditing Department must issue an order for the payment (Charter Section 8-101).
- 4) After receiving an order from the Auditing Department, the City Treasurer makes the payment out of the treasury (Charter Section 8-101).

In conclusion, contrary to the Treasurer's April 8, 2019 News Release, the Treasurer has neither the duty nor the authority to pay the 1.2 million dollars on her own. This memorandum comprises the City Solicitor's opinion on this matter and is the actual advice of the "City's counsel," and it *does not* support the Treasurer's assertion of authority.

W0105203

# **EXHIBIT F**

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 19-032**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS AND GENERAL OBLIGATION BOND ANTICIPATION NOTES IN ORDER TO PROVIDE THE FUNDS NECESSARY TO (I) FINANCE STREET REPAIRS AND IMPROVEMENTS OF VARIOUS STREETS AND ROADWAYS LOCATED WITHIN THE CITY LIMITS AND (II) REFINANCE ANY CITY DEBT RELATED TO THE WILMINGTON HOUSING PARTNERSHIP; PROVIDING FOR THE SALE OF THE BONDS AND THE NOTES; AND AUTHORIZING OTHER NECESSARY ACTION**

---

**Rev. 1  
#4669**

**Sponsor:**

**Council  
Member  
Freel**

**Co-Sponsors:**

**Council  
President  
Shabazz**

**Council  
Member  
Adams**

**WHEREAS**, the City of Wilmington (the "City") presently intends: (i) to fund street repairs and improvements of various streets and roadways located within the City limits as specified in the City's capital budget for its Fiscal Year ending June 30, 2018 (the "FY 2018 Street Repairs"); (ii) to fund street repairs and improvements of various streets and roadways located within the City limits as specified in the City's capital budget for its Fiscal Year ending June 30, 2020 (the "FY 2020 Street Repairs") (the FY 2018 Street Repairs and the FY 2020 Street Repairs are collectively referred to as the "Street Repairs"); and (iii) to refinance any City General Obligation Bonds issued to fund a loan to the Wilmington Housing Partnership as specified in the City's capital budget for its Fiscal Year ending June 30, 2020 (the "Debt") (the Street Repairs and the Debt are collectively referred to as the "Project"); and

**WHEREAS**, the City has determined to issue on a tax-exempt and/or taxable basis: (i) one or more series of its General Obligation Bonds in an aggregate principal amount not to exceed \$15,600,000; and (ii) one or more series of its General Obligation Bond Anticipation Notes in an aggregate principal amount not to exceed \$15,600,000 to provide permanent and temporary financing, respectively, for the Project and the costs associated with issuing such bonds and notes, as the case may be; and

**WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the "General Ordinance"), authorizing the City to issue General Obligation Bonds or General Obligation Bond Anticipation Notes secured by a pledge of the City's full faith, credit and taxing power, for the purpose of, among other things, paying the costs of capital projects; and

**WHEREAS**, this Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Bonds and/or the Notes.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1. Defined Terms.** Terms used in this Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

**SECTION 2. Authorization of Project.** The City hereby approves the Project as described in the recitals hereto and the proper officers of the City are hereby authorized to take all action necessary to proceed with the Project.

**SECTION 3. Authorization of General Obligation Bonds and General Obligation Bond Anticipation Notes.** The City hereby authorizes the issuance of its tax-exempt or taxable General Obligation Bonds in an aggregate principal amount not to exceed \$15,600,000 (the "Bonds") for the purpose of providing permanent financing for the Project and for the costs associated with issuing the Bonds. Prior to and in anticipation of the issuance of the Bonds, the City is also authorized to issue its General Obligation Bond Anticipation Notes (the "Notes") on a tax-exempt or taxable basis for the purpose of providing temporary, interim financing for the Project and for the costs associated with issuing the Notes. The Bonds and the Notes shall be issued pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Project and the costs of issuing the Bonds or the Notes, as the case may be. The Bonds and the Notes shall be sold at a private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee. It is intended that the Notes will be paid from the proceeds of the Bonds.

The Bonds and the Notes shall be awarded and sold by the Bond Committee to one or more underwriters, placement agents or other financial institutions to be selected by the Bond Committee (the "Purchaser") at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Note Purchase Agreement or a Bond Purchase Agreement, as the case may be, or similar agreement or commitment, to be entered into by the Purchaser and the City, or (ii) in the case of a competitive sale, in a Bid Form submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the Bid Form which represents the lowest true interest cost to the City. The appropriate officials of the City are hereby authorized to enter into such Note Purchase Agreement or such Bond Purchase Agreement, as the case may be, and to execute the Note Purchase Agreement or Bond Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds and the Notes shall bear such rate or rates of interest (not to exceed 8%), shall mature in such principal amounts and on such dates, shall be subject to redemption, shall be sold at such price and in such manner, and shall be in such form and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the "Bond Committee Resolution").

**SECTION 4. Authorization of Paying Agent's Agreement.** If the Bond Committee determines that retaining a Paying Agent is in the best financial interests of the City, a fiscal agent, paying agent and registrar for the Notes or the Bonds (the "Paying Agent") may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the appropriate officials of the City are hereby authorized and directed to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

**SECTION 5. Execution of the Bonds and the Notes.** The Bonds and the Notes shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the City Seal, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

**SECTION 6. Security for the Bonds and the Notes.** The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Bonds and the Notes. The Bonds and the Notes shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy *ad valorem* taxes upon all taxable property in the City for the payment of the Bonds and the Notes without limitation as to rate or amount.

**SECTION 7. Federal Tax Covenants.** In the event that the Bonds and/or the Notes are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Bonds and the Notes to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto, throughout the term of the Bonds and the Notes, as the case may be. The City further covenants with the registered owners of the Bonds and the Notes that it will make no investments or other use of the proceeds of the Bonds and the Notes, respectively, which would cause such Bonds or Notes to be "arbitrage bonds" as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable.

**SECTION 8. Official Intent.** In accordance with Treasury Reg. §1.150-2, the City hereby confirms its intentions that a portion of the proceeds of the obligations authorized by this Ordinance will be used to reimburse itself for qualifying expenditures paid prior to the date of issuance of the obligations authorized by this Ordinance. All original expenditures to be reimbursed will be capital expenditures (as defined in Treas. Reg. §1.150-1(b)) and other amounts permitted to be reimbursed pursuant to Treas. Reg. §1.150-2(d)(3) and (f).

**SECTION 9. Further Action.** The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

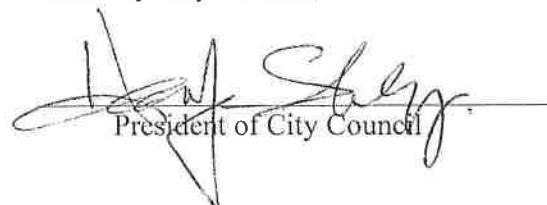
**SECTION 10. Inconsistent Provisions.** In the event that any provision of the Bonds or the Notes, or any term or condition contained in any agreement relating to the Bonds, the Notes or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the Bonds or the Notes, such agreements and this Supplemental Ordinance shall be controlling with respect to the Bonds, the Notes, such agreements and this Supplemental Ordinance.

**SECTION 11. Relation to General Ordinance.** This Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Bonds and the Notes authorized hereunder. This Ordinance shall take effect immediately upon its passage.

**SECTION 12. Effective Date.** This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

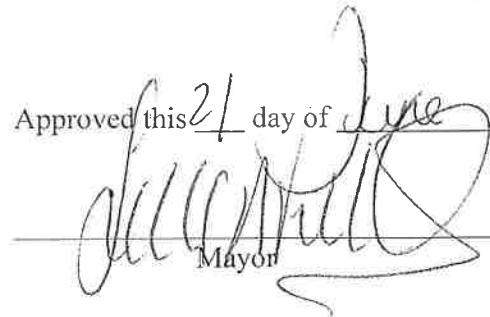
First Reading ..... June 6, 2019  
Second Reading ..... June 6, 2019  
Third Reading ..... June 20, 2019

Passed by City Council, June 20, 2019

  
President of City Council

ATTEST:   
City Clerk

Approved this 21 day of June, 2019.

  
Mayor

**SYNOPSIS:** This Ordinance authorizes the issuance of up to \$15,600,000 aggregate principal amount of General Obligation Bonds (the "Bonds") and up to \$15,600,000 aggregate principal amount of General Obligation Bond Anticipation Notes (the "Notes") in order to: (i) provide temporary and permanent financing for street repairs and improvements of various streets and roadways located within the City limits; (ii) provide temporary and permanent financing for the refinancing of any outstanding City debt related to the Wilmington Housing Partnership; and (iii) to pay the costs associated with issuance of the Bonds and the Notes.

W0106231

# **EXHIBIT G**

Act H

**CITY OF WILMINGTON, DELAWARE — PARTIAL RECEIVING REPORT**

## WILMINGTON HOUSING PARTNERSHIP

190974

**V  
E  
N  
D  
O  
R**

**PURCHASE ORDER NO.**

**FINAL PAYMENT — CLOSE PO —  CHECK AND ATTACH  
SIGNED RECEIVING COPY OF PURCHASE ORDER**

ACCTS. DIV. AUDIT: \_\_\_\_\_ DATE: \_\_\_\_\_

**FOR USE BY FINANCE OFFICE ONLY**

BATCH NO.	CLAIM NO.	CLOSE PO	INVOICE NUMBER	INV. DATE	PAYMENT AMOUNT
			7-190974	8/1/19	

DUE DATE 8/7/19	SEP CK	SPECIAL REMITTANCE INFORMATION	ENTERED BY P	DATE 8/6/19
--------------------	--------	--------------------------------	-----------------	----------------

ORG.	OBJECT	PROJECT	EXPENDITURE AMOUNT
39919000	74215	18029	102,716.00

I CERTIFY THAT I HAVE RECEIVED THE ARTICLES OR SERVICES AS STATED ABOVE AND, THAT THEY ARE SATISFACTORY EXCEPT AS NOTED.

DEPT. HEAD OR AUTHORIZED AGENT

DATE

21378

**APPLICATION AND CERTIFICATION FOR PAYMENT**

TO OWNER: Wilmington Housing Partnership  
PROJECT: 523-529 Vandever Ave  
800 N French Street  
Wilmington, DE 19801

FROM CONTRACTOR:

VIA ARCHITECT:

**ALIA DOCUMENT G702**

PAGE ONE OF

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

PERIOD TO: 8/1/19-9/1/19  
PROJECT NOS:

**CONTRACT I: Wilmington Housing Partnership****CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, ALIA Document G703, is attached.

CONTRACT DATE 2/1/2019

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM \$ 640,745.74
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 640,745.74
4. TOTAL COMPLETED & STORED TO DATE (Column Q on G703) \$ 405,794.24
5. RETAINAGE:
  - a. 10 % of Completed Work (Column D + E on G703) \$ 0.00
  - b. % of Stored Material (Column P on G703) \$ Included in above
- Total in Column 1 of G703) \$ 0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total) \$ 405,794.24
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 303,928.24
8. CURRENT PAYMENT DUE \$ 102,163.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
<b>TOTALS</b>		

NET CHANGES by Change Order

ALIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1993 EDITION - ALIA-7-87002

THE AMERICAN INSTITUTE OF ARCHITECTS, 111 NEW YORK AVE., NW, WASHINGTON, DC 20004-2502

Users may obtain validation of this document by requesting a completed ALIA Document D401 - Certification of Document's Authenticity from the Licensee.

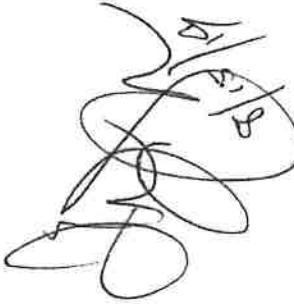
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

County of: NCC  
day of:

Date:



## CONTINUATION SHEET

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column 1 on Contracts where variable retainage for line items may apply.

## ALA DOCUMENT G703

PAGE OF PAGES

APPLICATION NO: 7

APPLICATION DATE: 7/24/2019

PERIOD TO: 8/1/19 - 9/1/19

ARCHITECT'S PROJECT NO:

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (Q + C)	BALANCE TO FINISH (C - Q)	RETAINAGE (IF VARIABLE RATE)
				D	E					
1	Site Work	\$10,000.00	\$6,840.00	\$0.00	\$0.00	\$6,840.00	\$6,840.00	68.40%	\$3,160.00	\$0.00
2	Concrete Work	\$37,930.00	\$7,886.00	\$0.00	\$0.00	\$7,886.00	\$7,886.00	20.79%	\$30,044.00	\$0.00
3	Framing	\$9,338.24	\$9,338.24	\$0.00	\$0.00	\$9,338.24	\$9,338.24	100.00%	\$0.00	\$0.00
4	Insulation Fire Caulk	\$16,000.00	\$8,000.00	\$8,000.00	\$0.00	\$16,000.00	\$16,000.00	100.00%	\$0.00	\$0.00
5	Fencing	\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$12,000.00	\$0.00
6	Electrical	\$30,000.00	\$20,000.00	\$20,000.00	\$0.00	\$20,000.00	\$20,000.00	66.67%	\$10,000.00	\$0.00
7	HVAC	\$48,000.00	\$6,480.00	\$6,480.00	\$0.00	\$12,960.00	\$12,960.00	27.00%	\$35,040.00	\$0.00
8	Plumbing	\$33,440.00	\$16,720.00	\$16,720.00	\$0.00	\$16,720.00	\$16,720.00	50.00%	\$16,720.00	\$0.00
9	Drywall	\$52,500.00	\$43,618.00	\$43,618.00	\$0.00	\$52,500.00	\$52,500.00	100.00%	\$0.00	\$0.00
10	Paint	\$18,200.00	\$5,000.00	\$13,200.00	\$0.00	\$18,200.00	\$18,200.00	100.00%	\$0.00	\$0.00
11	Flooring	\$32,772.50	\$16,000.00	\$16,000.00	\$0.00	\$32,772.50	\$32,772.50	100.00%	\$0.00	\$0.00
12	Doors	\$41,800.00	\$18,618.00	\$23,182.00	\$0.00	\$41,800.00	\$41,800.00	100.00%	\$0.00	\$0.00
13	Trim	\$16,000.00	\$8,000.00	\$8,000.00	\$0.00	\$16,000.00	\$16,000.00	100.00%	\$0.00	\$0.00
14	Roofing	\$20,000.00	\$10,000.00	\$10,000.00	\$0.00	\$11,600.00	\$11,600.00	58.00%	\$8,400.00	\$0.00
15	Brick	\$60,000.00	\$50,680.00	\$50,680.00	\$0.00	\$50,680.00	\$50,680.00	84.47%	\$9,320.00	\$0.00
16	Siding	\$30,000.00	\$17,858.00	\$17,858.00	\$0.00	\$17,858.00	\$17,858.00	59.66%	\$12,102.00	\$0.00
17	Cleaning	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$8,000.00	\$0.00
18	Dumpsters	\$10,000.00	\$1,000.00	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	10.00%	\$9,000.00	\$0.00
19	Kitchen Cabinets	\$17,300.00	\$8,000.00	\$9,300.00	\$0.00	\$17,300.00	\$17,300.00	100.00%	\$0.00	\$0.00
20	Kitchen Counters	\$15,200.00	\$0.00	\$1,899.50	\$0.00	\$1,899.50	\$1,899.50	12.50%	\$13,300.50	\$0.00
21	Appliances	\$22,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$22,000.00	\$0.00
22	Laborer	\$14,400.00	\$9,000.00	\$5,400.00	\$0.00	\$14,400.00	\$14,400.00	100.00%	\$0.00	\$0.00
23	Landscape	\$15,865.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$15,865.00	\$0.00
24	Construction Management	\$50,000.00	\$40,000.00	\$40,000.00	\$0.00	\$40,000.00	\$40,000.00	80.00%	\$10,000.00	\$0.00
25	Contingency	\$20,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$20,000.00	\$0.00
<b>GRAND TOTALS</b>		<b>\$640,745.74</b>	<b>\$303,078.24</b>	<b>\$102,716.80</b>	<b>\$0.00</b>	<b>\$405,794.24</b>	<b>\$405,794.24</b>	<b>63.33%</b>	<b>\$234,951.50</b>	<b>\$0.00</b>

Users may obtain validation of this document by requesting of the licensee a completed AIA Document D401 - Certification of Document's Authenticity

# Invoice



929 Renovations, LLC  
 Angelo Pacheco, Jr  
 302-723-3704  
[www.929renovationsllc.com](http://www.929renovationsllc.com)

Date August 5, 2019  
 Invoice # 459c

929 Renovations, LLC  
 3 Leighty Circle  
 Wilmington, DE 19804  
 Phone 302-723-3704  
[Angelo@929renovations.com](mailto:Angelo@929renovations.com)

TO Phillip Raffan  
 Wilmington Housing  
 Partnership  
 800 French St. 7<sup>th</sup> Floor  
 Wilmington, DE 19801  
 Phone 302-463-9410  
 Customer ID Vandever

Qty	Item #	Description	Unit Price	Discount	Line Total
		<b>Project Vandever</b>			<b>\$218,472.00</b>
	1.	Supply and install ½" drywall thru out, ½" moisture/mold resistant drywall in bathrooms		Complete 523 and 525 on order for 527 and 529	
	2.	Supply and install flat (1 color paint) on walls, white ceilings, white semi-gloss on doors and trim		Complete 523 and 525	
	3.	Supply and install all interior doors and trim		Installed in units 523 and 525, on order for 527 and 529	
	4.	Supply and install all flooring, carpet for bedroom, LVT snap lock flooring for 1 <sup>st</sup> floor and all hallways, tile in all bathrooms, laundry room, and shower walls		On site for all 4 units	
	5.	Supply and install all kitchen cabinets, and bathroom vanities		On site for all 4 units	
	6.	Supply and install granite tops for the kitchen, cultured marble tops for the bathrooms		On site for all 4 units	
	7.	Supply and install privacy fencing with a gate for each property			
	8.	Supply and install a front porch and install railings in front and back of the properties			
			Draw #1		<b>\$54,618.00</b>
			Draw #2		<b>\$54,618.00</b>
			Draw #3		<b>\$81,236.00</b>
			Sub-total		<b>\$190,472.00</b>
			Balance		<b>\$28,000.00</b>

TRIMARK ENTERPRISES, INC

WILMINGTON, DE 19804  
2406 W. Newport Pike

Date	Invoice #
8/2/2019	08022019-01

Bill To
PHIL RAFFIN

Description	P.O. No.	Project	
		PINE AND VANEVER -R	
	Qty	Rate	Amount
PER ORIGINAL CONTRACT, DATED 2/8/18 RETURN TRIP TO FLASH PIPE COLLARS @ \$195.00 EACH. PRICE INCREASE IS NOW \$200.00 EACH	8	200.00	1,600.00
		<b>Total</b>	\$1,600.00
kmtrimark@comcast.net		Payments/Credits	50.00
		Balance Due	\$1,550.00

# INVOICE

Elevations

**BILL TO:** Wilmington Housing Partnership  
800 N French St  
Wilmington DE 19801

**Project:** 523-529 Vandever Ave  
Wilmington DE.

The Contractor and Owner agree as follows:

**Section 1: Scope of Work**

The contractor does hereby covenants to furnish all supervision, labor, tools, equipment, supplies,

1. Provide Labor at a cost of \$15 per hour for one Laborer for 5 months of the project at Vandever Ave for a total sum of \$14,400	
Invoice for balance	\$5,400.00



# Invoice

Durney Enterprises, Inc.

1425 N Franklin St  
Wilmington, DE 19806

Date

Invoice #

5/13/2019

2124

BILL TO

Wilminton Housing Partnership  
800 N French St  
7th floor  
Wilm, DE 19701

Quantity	Description	Amount
	Furnish and install firecaulk and fireblocking ( 4 @ 500.00 each ) 50 % draw at this time	1,000.00
	Furnish and install insulation per code ( 4 @ 3500.00 each ) 50 % draw at this time	7,000.00
<b>VANDERVER AVE TOWNHOMES</b>		
<b>Total</b>		\$8,000.00

ABC HEATING LLC  
P.O. BOX 256  
MIDDLETOWN, DE 19709  
(302) 668-9665  
abcheatingllc@gmail.com



## Invoice

**BILL TO**  
Phillip Raffan

**INVOICE # 2451**  
**DATE 03/21/2019**  
**DUE DATE 04/20/2019**

ACTIVITY	AMOUNT
HVAC Estimate for Vandever and Pine. ***THIS QUOTE IS PER UNIT, NOT THE ENTIRE PROJECT*** Quoted is American Standard brand equipment. TBD: BTU 95% gas heater and TBD: 14 SEER AC. AC mounted on 3" plastic pad on roof. Lifetime heat exchanger/5 year compressor/1 year parts/1 year labor warranty. Duct and equipment installed to code. Includes Wilmington permit. Includes Honeywell T6 stat. Includes recessed dryer box and dryer termination. Includes exhaust ductwork and penetrations for bathroom fans. Includes standard H&C GRD's. Excludes bathroom exhaust fan fixtures. Excludes smart fan/fresh air system. Excludes line voltage. Excludes duct blast. Excludes gas piping. Excludes NEBB duct balance. Excludes permanent sealing of any provided roof flashing.	0.00
Option to furnish and install a Panasonic smart fan, ADD	0.00
Option for duct blast test, as necessary, ADD	0.00
<b>THIS IS AN INVOICE FOR A DOWN PAYMENT. 15% Down on the entire project. \$10800 per unit * 4 units = \$43200. 15% of \$43200=\$6480</b>	<b>6,480.00</b>
<b>BALANCE DUE</b>	<b>\$6,480.00</b>

# **EXHIBIT H**



**CITY OF WILMINGTON  
CITY TREASURERS OFFICE**

Wilmington, Delaware 19801

ADMINISTRATIVE DIVISION

August 1, 2019

**MEMORANDUM**

TO: Wilmington Bond Committee  
Wilmington City Council

FROM: Velda Jones-Potter, City Treasurer 

SUBJECT: Exception to Actions of Mayor and Finance Chair of August 1, 2019

The Office of City Treasurer sees the proceedings of this meeting as an attempt by the Mayor, Michael Purzycki, and City Council's Finance Committee Chair, Bud Freel, to forcibly control what has customarily been managed by the City Treasurer; including accountability for the financing and, consequently, cash management of the City. These efforts are further evidenced by other actions including the Administration and Council Finance Committee Chair's preemptive actions relative the sizing and authorization process of the City's General Obligation Bonds and a frivolous legal threat from the Mayor re: debt payments. This Committee has operated for more than 30 years under the current practice – I take exception to these proceedings and question the legitimacy thereof.

By imposing these rules, the aforementioned members of the Bond Committee are choosing to relegate the Treasurer to a very limited involvement in the Debt and Cash Management process and by doing so are transferring and accepting obligation for ensuring cash is available to meet City needs. Further, the Mayor and the Finance Committee Chair, by their actions today, are assuming obligation for the City's debt management policy and all post issuance compliance activities associated therewith; including, but not limited to, the City's warrants and representations made in its Tax Certificates and Continuing Disclosure Agreements for all outstanding and future debts of the City.

Let it be known to members of Council and the public that the actions taken by the Mayor and City Council's Finance Chair represent a material change of this City government's operation at the highest level that, by its very nature, poses significant risk.

VJP

# **EXHIBIT I**

# City of Wilmington Delaware

**Velda Jones-Potter**  
City Treasurer

Administrative Division

Louis L. Redding City/County Building  
800 French Street  
Wilmington, Delaware 19801-3537  
(302) 576-2480  
treasurer@wilmingtonde.gov



August 8, 2019

## **HAND DELIVERY**

Brett Taylor, Finance Director  
Louis L. Redding City/County Building  
800 North French Street, 5<sup>th</sup> Floor  
Wilmington, DE 19801

RE: Extended Custody Advisory – Wilmington Housing Partnership Corporation

Dear Brett Taylor:

Be advised that as of August 8, 2019, the City Treasurer's Office, pursuant to Treasury Order § 2019-1.1, maintains extended custody of a payment (Check No. 4078) processed by your department in an amount of **One Hundred Two Thousand, Seven Hundred Sixteen Dollars and 00/100 (\$102,716.00)** to the nonprofit known as Wilmington Housing Partnership Corporation.

Payment activity to this vendor is currently under review by the City Auditor.

City Treasurer's Office  
Wilmington, Delaware

VJP/sl

CC: Terence J. Williams, City Auditor  
Roseanne Prado, Accounting Manager  
Knisha Clark, Accounts Payable Coordinator

# **EXHIBIT J**

## ATTACHMENT C



B  
I  
I  
T  
O  
FINANCE - ACCOUNTS DIVISION  
LOUIS L. REDDING - 5TH FLOOR  
800 FRENCH STREET  
WILMINGTON, DE 19801-3537  
accountspayable@wilmingtonde.gov

Retain this purchase order for proof of tax  
exemption. Tax Exempt #51-0176414

V  
e  
n  
d  
o  
r  
LANCASTER ASSOCIATES LLC  
2126 W NEWPORT PIKE  
SUITE #200  
WILMINGTON DE 19084

## Purchase Order

Fiscal Year 2020 Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS.

Purchase  
Order #

200419-00

Delivery must be made within doors of  
specified destination.

S  
h  
i  
p  
T  
O  
CITY CLERK'S OFFICE  
CITY / COUNTY BLDG - 9TH FLOOR  
800 FRENCH STREET  
WILMINGTON, DE 19801-3537

Requested By: Akira Grenardo

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference			
Date Ordered		Vendor Number		Date Required		Freight Method/Terms		Department/Location	
07/11/2019		38351						120 CITY COUNCIL ADMIN	
Item#	Description/Part No.		Qty	UOM	Unit Price		Extended Price		
1	1 YEAR LEASE RENTAL AGREEMENT		1.0	EACH	\$60,000.00		\$60,000.00		
1	1 YEAR LEASE RENTAL AGREEMENT FOR TPO SITE \$5,625 PER MONTH (APRIL 1, 2019-MARCH 31, 2020)								
	23312300 - 55608 - 14TV2		\$60,000.00						

## ATTACHMENT D

## **INVOICES AND REQUESTS FOR CHECK**

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

## Invoice

Date	Invoice #
4/1/2019	Rent

040119

**Bill To**  
City of Wilmington  
Louis L. Redding City/County Building  
800 French St. 9th Floor  
Wilmington, DE 19801

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Rent TIC	5,625.00 1,075.00	5,625.00 1,075.00
<b>Total</b>			\$6,700.00

**CITY OF WILMINGTON  
REQUEST FOR CHECK**

**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

DEPARTMENT: CITY COUNCIL	DATE July 17, 2019			
PAY TO: Lancaster Associates LLC	Batch 100114 Vendor No. 2000019 Invoice No. 47619 Invoice Date: 7/16/19 Due Date 7/18/2019			
ADDITIONAL ADDRESS OR IDENTIFICATION STREET: 2126 W. Newport Pike, Suite #200				
CITY: Wilmington STATE: DE ZIP: 19804	<input checked="" type="checkbox"/> Separate Check <input type="checkbox"/> (Click on box for separate check)			
FEDERAL I.D.#S:				
DEPARTMENTAL ACTION REQUIRED				
<input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation <input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes <input type="checkbox"/> Other				
Acc'ts Audit <input type="checkbox"/> Date Entered <input type="checkbox"/> Date 2/1/19				
ACCOUNT DISTRIBUTION				
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT
23312300	55808	14TV2	0	\$6,700.00
				
TOTAL				\$ 6,700.00

**DESCRIPTION:** April Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	CMB 27/07/19
REQUEST DATE: July 17th, 2019	APPROVED DATE:

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

Date	Invoice #
5/1/2019	Rent

619

## Invoice

**Bill To**  
City of Wilmington  
Louis L. Redding City/County Building  
800 French St. 9th Floor  
Wilmington, DE 19801



P.O. No.	Terms	Project



FY 2019

**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

DEPARTMENT: CITY COUNCIL		DATE	July 17, 2019																				
PAY TO: Lancaster Associates LLC		Batch	3835																				
ADDITIONAL ADDRESS OR IDENTIFICATION		Vendor No	200419																				
STREET: 2126 W. Newport Pike, Suite #200		Invoice No.	50114																				
CITY: Wilmington STATE: DE ZIP: 19804		Invoice Date	3/1/19																				
FEDERAL I.D./SSN:		Due Date	7/18/2019																				
<p><b>DEPARTMENTAL ACTION REQUIRED</b></p> <p><input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation <span style="float: right;">Acc'l's Audit _____ Date _____</span></p> <p><input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes <span style="float: right;">Entered _____ Date _____</span></p> <p><input type="checkbox"/> Other</p>																							
<p><b>ACCOUNT DISTRIBUTION</b></p> <table border="1"> <thead> <tr> <th>ORG CODE</th> <th>OBJECT CODE</th> <th>PROJECT CODE</th> <th>DESCRIPTION</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>23312300</td> <td>55608</td> <td>14TV2</td> <td>0</td> <td>\$8,700.00</td> </tr> <tr> <td colspan="5">  </td> </tr> <tr> <td colspan="4">TOTAL</td> <td>\$ 6,700.00</td> </tr> </tbody> </table>				ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT	23312300	55608	14TV2	0	\$8,700.00						TOTAL				\$ 6,700.00
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT																			
23312300	55608	14TV2	0	\$8,700.00																			
																							
TOTAL				\$ 6,700.00																			

**DESCRIPTION:** May Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	<i>OMB</i> 7/17/19
REQUEST DATE: July 17th, 2019	APPROVED DATE
<input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Not Approved</i>	
<input type="checkbox"/> <i>Accrued Payable</i> <i>Jul 17 2019</i> <i>LOGGED</i>	

F19

# Invoice

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

Date	Invoice #
6/1/2019	Rent

060119

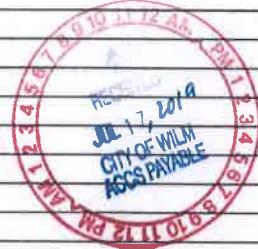
Bill To
City of Wilmington Louis L. Redding City/County Building 800 French St. 9th Floor Wilmington, DE 19801

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Rent TIC	5,625.00 1,075.00	5,625.00 1,075.00
<p><del>PO2000H119</del></p> 			
<b>Total</b>			\$6,700.00

**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

F12019

DEPARTMENT: CITY COUNCIL		DATE	July 17, 2019	
PAY TO: Lancaster Associates LLC		Batch <input type="text" value="3835"/> Vendor No <input type="text" value="200419"/> Invoice No. <input type="text" value="060114"/> Invoice Date: <input type="text" value="7/18/2019"/> Due Date <input type="text" value="7/18/2019"/> Separate Check <input checked="" type="checkbox"/> (Click on box for separate check)		
ADDITIONAL ADDRESS OR IDENTIFICATION				
STREET: 2126 W. Newport Pike, Suite #200				
CITY: Wilmington STATE: DE ZIP: 19804		Acct's Audit <input type="text"/> Date <input type="text"/> Entered <input type="text"/> Date <input type="text"/> 7/17/09		
FEDERAL I.D./SS:				
DEPARTMENTAL ACTION REQUIRED				
<input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation		Acct's Audit <input type="text"/> Date <input type="text"/> Entered <input type="text"/> Date <input type="text"/> 7/17/09		
<input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes <input type="checkbox"/> Other				
ACCOUNT DISTRIBUTION				
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT
23312300	55608	14TV2	0	\$6,700.00
				
TOTAL		\$ 6,700.00		

**DESCRIPTION:** June Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	<i>CMG</i> <i>2/12/19</i>
REQUEST DATE: July 17th, 2019	APPROVED DATE
<div style="border: 1px solid blue; padding: 5px; display: inline-block;">           JUL 17 2019              ACCOUNTS PAYABLE            LOGGED         </div>	

# **EXHIBIT K**



# Treasurer Register

---

2019-2

Wednesday  
Aug. 14, 2019

# Executive Documents

## Article VI –

### The City Treasurer

#### Order of the Treasurer 2019-2 of August 14, 2019

#### **Imposing Extended Custody of Payments with Respect to Property Leases Associated with Third-Party Operations under the City's Cable Television Franchise Agreement.**

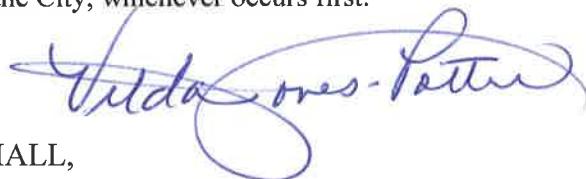
Article VI of the Charter of the City of Wilmington (the “City”) vests the City Treasurer (the “Treasurer”) with the authority to make payments out of the city treasury as custodian of city funds; and

- It is the practice of the Office of the City Treasurer (the “Treasury”) to impose adequate controls to reasonably assure that payments from the city treasury are accurate, timely and practical; and
- Treasury seeks to reduce operating risks of noncompliance, inefficiencies and misstatements due to irregularities by performing investigatory procedures on payment warrants prior to releasing payments; and
- According to Treasury’s Disbursement Policy (the “Policy”), Treasury shall perform extensive investigatory procedures by vendor, general ledger account, department, project, and/or any common element representing activity that Treasury deems to carry increased risk; and
- A common element is deemed by Treasury to carry increased risk if Treasury is made aware of, or otherwise has reason to suspect, irregularity with respect thereto; and
- Also according to the Policy, the Treasurer may impose extended custody of payments associated with a common element if, after extensive investigatory procedures are performed, Treasury identifies possible irregularities; and
- Property leases associated with third-party operations under the City’s cable television Franchise Agreement is deemed by Treasury to be a common element carrying increased risk (the “Common Element”); and
- After performing extensive investigatory procedures as more fully illustrated in the analysis attached hereto as Exhibit “A”, Treasury has identified possible irregularities with respect to City payments associated with the Common Element.

Now, therefore, the Treasurer, hereby orders:

**Section 1. Extended Custody.** Treasury is hereby directed to maintain custody of all payments associated with the Common Element pending attestation of the accuracy and compliance of the same by the City's Internal Auditor which shall be substantiated by interviews of the City department originating the payments, the Procurement and Accounting Divisions of the City's Finance Department, the City's Law Department, and/or any related party of interest; and/or performing procedures necessary to assure the compliance and accuracy of payments associated with the Common Element and render opinion of same.

**Sec. 2. Effective and Terminating Date.** This Order of the Treasurer shall become effective immediately upon execution by the Treasurer and shall terminate with Treasury's receipt of the approving opinion from the City's Internal Auditor; or, corrective action, to the satisfaction of Treasury, taken by the appropriate officers of the City, whichever occurs first.



WILMINGTON CITY HALL,  
*August 14, 2019*

# ATTACHMENT A

## LEASE

### ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE is made this 29th ( ) day of March, 2019, by and between Leased Access Preservation Association Inc. (hereinafter called "Assignor"), the City of Wilmington, Delaware, a municipal corporation (hereinafter called "Assignee"), and Lancaster Associates LLC, a Delaware Limited Liability Company (hereinafter called "Landlord").

WHEREAS, Assignor and Landlord entered into a lease agreement on December 17, 2013 (the "Lease"), attached hereto as "Attachment A", for the lease of the property known as 2801 Suite 1 Lancaster Avenue, Wilmington, Delaware 19805 for a term of three years commencing on April 1, 2014 and ending on March 31, 2017;

WHEREAS, Assignor and Landlord entered into an agreement on April 3, 2017, attached hereto as "Attachment B", to amend the Lease by extending the term of the Lease an additional five (5) years commencing on April 1, 2017 and ending on March 31, 2022;

WHEREAS, there are three (3) years remaining on the Lease with the option to renew the Lease for an additional five (5) years; and

WHEREAS, Assignor desires to assign the Lease to Assignee, and Assignee desires to accept the assignment of the Lease from Assignor, all in accordance with the terms hereof. Landlord consents to the assignment of the Lease dated \_\_\_\_\_ for \_\_\_\_\_ from Assignor to Assignee for the purposes set forth herein.

WHEREAS, Assignor and Landlord acknowledge that this agreement is subject to approval by City Council, pursuant to Section 2-513 of the Charter for the City of Wilmington. Absent approval by City Council by Ordinance, this agreement is null and void.

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

### SECTION 1 ASSIGNMENT

Assignor, for and in consideration of the payment of the Rent (as such term is defined in the Lease) and other amounts due under the Lease by Assignee and the performance of the covenants under the Lease by the Assignee after the date hereof, does hereby grant and assign unto Assignee all its (Assignor's) right, title, and interest in and to the Lease and the Premises for the remaining term of the Lease (including any options or renewals thereof). Landlord will return Assignor's security deposit in the amount of \$5,000.00 within 30 days of execution of this agreement. Landlord further agrees that Assignee shall be responsible for paying a \$5,000.00 security deposit within two weeks of final approval of this agreement by City Council.

Assignor acknowledges and agrees, for the benefit of Landlord and Landlord's successors-in-interest, that Assignor has not been relieved of any of his obligations under the Lease. Notwithstanding the foregoing and/or anything in the Lease to the contrary, it is agreed that Assignor shall remain liable for the performance and observance of the covenants and conditions that accrue under the Lease through the date of execution hereof and shall be relieved from any liability that accrues under the Lease upon receipt of approval by City Council, pursuant to Section 2-513 of the Charter for the City of Wilmington.

### SECTION 2

#### PERFORMANCE OF LEASE COVENANTS AND CONDITIONS

Charter for the City of Wilmington.

### SECTION 2 PERFORMANCE OF LEASE COVENANTS AND CONDITIONS

From and after the date hereof, Assignee hereby covenants and agrees, for the benefit of Landlord and Landlord's successors-in-interest, to perform all of Assignor's duties and obligations required under the terms, covenants and conditions of the Lease, arising from and after the date hereof, Assignee shall make all payments of Rent and Additional Rents and/or scheduled Payments due under the Lease from and after the date hereof in accordance with the terms of the Lease and shall send the same directly to Landlord as provided in the Lease, and/or modifications or changes thereof both prior to and subsequent to the assignment.

### SECTION 3

#### INDEMNIFICATION

Assignee does hereby indemnify and hold Assignor harmless from and against any loss, claim, damage, or expense, including reasonable attorney fees, which assignor may suffer, incur, or expend, arising out of any failure on the part of the Assignee to perform fully its obligations hereunder after the date hereof. Assignor does hereby indemnify and hold Assignee harmless from and against any loss, claim, damage, or expense, including reasonable attorney fees, which Assignee may suffer, incur or expend, arising out of any failure on the part of Assignor to perform fully its obligations hereunder prior to the date hereof.

### SECTION 4 LANDLORD'S CONSENT

Landlord, in consideration of the undertakings of the parties herein, hereby consents to the assignment of the Lease from Assignor to Assignee as set forth herein.

### SECTION 5 REPRESENTATION OF ASSIGNOR AND LANDLORD

Assignor hereby warrants, represents and covenants to Assignee as follows.

- (a) The Lease will be valid and in full force and effect as noted in SECTIONS 1 and 2 above inclusive of all amendments and/or modifications.
- (b) Other than what is attached and made part of said lease prior to the date hereof, Assignor has not previously assigned or sublet the Premises or any parts thereof or entered into any agreement permitting any person or entity to use or occupy any portion of the Premises.
- (c) Assignor is not a debtor in a bankruptcy proceeding and is not the subject of any state insolvency proceeding.
- (d) There exists no default under the Lease on the part of Landlord.

Landlord hereby warrants, represents, and covenants to Assignee as follows:

- (a) To the best of Landlord's knowledge and belief, without investigation, the Lease will be valid and in full force and effect.
- (b) Landlord has not approved any assignment or subletting of the Premises or any portion thereof other than to Assignee.
- (c) Landlord is not a debtor in a bankruptcy proceeding and is not the subject of any state insolvency proceeding.
- (d) To the best of Landlord's knowledge and belief, without investigation, there exists no default under the Lease on the part of the Assignor that has not been waived as part of this Assignment.

### SECTION 6 USE

The Assignee will conform to the use of the premises as granted in the Lease Agreement.

### SECTION 7 NOTICE

For all purposes in the Lease, proper notice shall be deemed given to "Tenant" under the Lease if sent to:

Hanifa Shabazz  
Louis L Redding City/County Building  
800 N. French St. 9<sup>th</sup> Floor

Wilmington, DE 19801

SECTION 8  
SUCCESSORS

This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their personal representatives, and successors.

SECTION 9  
APPLICABLE LAW

This Assignment shall be interpreted and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption of Lease to be properly executed under seal as of the day and year first above written.

ATTEST/WITNESS

ASSIGNOR: Leased Access Preservation Association Inc.



Date

ATTEST/WITNESS

ASSIGNEE: City of Wilmington



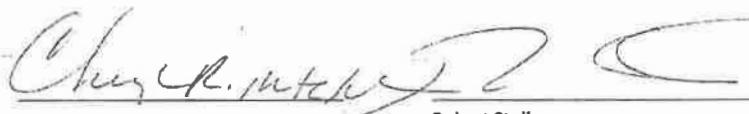
3/29/19



Date  
3/29/19

ATTEST/WITNESS

LANDLORD: Lancaster Associates LLC



3/29/19

Robert Stella  
Managing Member  
Lancaster Associates LLC  
2126 W. Newport Pike  
Suite 200  
Wilmington, DE 19804

Date

## ATTACHMENT B

### INDENTURE

TENANT: City of Wilmington

TERM: 1 years

DATE: April 1, 2019

LEASE COMMENCEMENT: April 1, 2019

Recommended Form of  
SHOPPING CENTER LEASE  
International Council of Shopping Centers, Inc.

Prepared For  
FINANCIAL & CONSULTING SERVICES, INC.  
2126 W. Newport Pike, Suite 200  
Wilmington, DE 19804

RULES AND REGULATIONS

**TENANT AGREES AS FOLLOWS:**

- 1.) All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purpose by owner.
- 2.) The delivery of shopping of merchandise, supplies and fixtures to and from the leased premises shall be subject to such rules and regulations as in the judgment of Owner, are necessary for the proper operation of the leased premises or Shopping Center.
- 3.) All garbage and refuse shall be kept in the kind of container specified by Owner, and shall be placed outside of the premises prepared for collection in the manner and at the times and places specified by Owner. If Owner shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the cost of removal of any of Tenant's refuse or rubbish.
- 4.) No radio or television or other similar device shall be installed without first obtaining in each instance Owner's consent in writing. No aerial shall be erected on the roof or exterior walls of the premises, or on the grounds, without in each instance, the written consent of Owner. Any aerial so installed without such written consent shall be subject to removal without notice at any time.
- 5.) No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the premises without the prior written consent of Owner.
- 6.) If the leased premises are equipped with heating facilities separate from those in the remainder of the Shopping Center, Tenant shall keep the leased premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
- 7.) The outside areas immediately adjoining the premises shall be kept clean free from snow, ice dirt and rubbish by Tenant to the satisfaction of Owner, and Tenant shall not place or permit any obstructions or merchandise in such areas.
- 8.) Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated for that purpose by Owner, Tenant shall furnish Owner with State automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Owner at its option shall charge Tenant Ten Dollars (\$10.00) per day per car parked in any area other than those designated, as and for liquidated damage.
- 9.) The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitee shall have caused it.
- 10.) Tenant shall use at Tenant's cost such pest extermination contractor as Owner may direct and at such intervals as Owner may require.
- 11.) Tenant shall not burn any trash or garbage of any kind in or about the leased premises, the Shopping Center, or within one mile of the outside property lines of the Shopping Center.

## INDEX

### ARTICLE I - GRANT AND TERM

- Section 1.01 Leased Premises
- Section 1.02 Use of Additional Areas
- Section 1.03 Commencement and Ending Date of Term
- Section 1.04 Lease Year Defined
- Section 1.05 Failure of Tenant to Open
- Section 1.06 Excuse of Owner's Performance
- Section 1.07 Joint Opening

### ARTICLE II - RENT

- Section 2.01 Minimum Rent
- Section 2.02 Percentage Rent
- Section 2.03 Gross Receipts Defined
- Section 2.04 Real Estate Taxes
- Section 2.05 Additional Rent
- Section 2.06 Past Due Rent and Additional Rent

### ARTICLE III - Records and Books of Account

- Section 3.01 Tenant's Records
- Section 3.02 Reports by Tenants

### ARTICLE IV - AUDIT

- Section 4.01 Right to Examine Books
- Section 4.02 Audit

### ARTICLE V - CONSTRUCTION, ALTERATION, RELOCATION & FINANCING OF IMPROVEMENTS & ADDITIONS THERETO

- Section 5.01 Owner's Obligation
- Section 5.02 Parking Facilities
- Section 5.03 Changes and Additions to Buildings
- Section 5.04 Financing
- Section 5.05 Right to Relocate

### ARTICLE VI - CONDUCT OF BUSINESS BY TENANT

- Section 6.01 Use of Premises
- Section 6.02 Operation of Business
- Section 6.03 Competition
- Section 6.04 Storage, Office Space

### ARTICLE VII - OPERATION OF CONCESSIONS

- Section 7.01 Consent of Owner

### ARTICLE VIII - SECURITY DEPOSIT

- Section 8.01 Amount of Deposit
- Section 8.02 Use and Return of Deposit
- Section 8.03 Transfer of Deposit

### ARTICLE IX - PARKING AND COMMON USE AREAS AND FACILITIES

- Section 9.01 Control of Common Areas by Owner
- Section 9.02 License

### ARTICLE X - COST OF MAINTENANCE OF COMMON AREAS

- Section 10.01 Tenant to bear Pro-Rata Share of Expenses

### ARTICLE XI - SIGNS, AWNINGS, CANOPIES, FIXTURES, ALTERATIONS

- Section 11.01 Installation by Tenant
- Section 11.02 Removal and Restoration by Tenant
- Section 11.03 Tenant shall Discharge all Liens
- Section 11.04 Signs, Awnings and Canopies

### ARTICLE XII - MAINTENANCE OF LEASED PREMISES

- Section 12.01 Maintenance by Tenant
- Section 12.02 Maintenance by Owner
- Section 12.03 Surrender of Premises
- Section 12.04 Rules and Regulations

**ARTICLE XIII - INSURANCE AND INDEMNITY**

Section 13.01 Liability Insurance  
Section 13.02 Fire Insurance Premium  
Section 13.03 Indemnification of Owner  
Section 13.04 Plate Glass  
Section 13.05 Boiler Insurance

**ARTICLE XIV - UTILITIES**

Section 14.01 Utility Charges

**ARTICLE XV - OFFSET STATEMENT, ATTORNMENT SUBORDINATION**

Section 15.01 Offset Statement  
Section 15.02 Attornment  
Section 15.03 Subordination  
Section 15.04 Attorney in Fact

**ARTICLE XVI - ASSIGNMENT AND SUBLetting**

Section 16.01 Consent Required  
Section 16.02 Corporate Ownership

**ARTICLE XVII - WASTE, GOVERNMENTAL REGULATIONS**

Section 17.01 Waste or Nuisance  
Section 17.02 Governmental Regulations

**ARTICLE XVIII - ADVERTISING, MERCHANTS ASSOCIATION**

Section 18.01 Change of Name  
Section 18.02 Solicitation of Business  
Section 18.03 Merchant's Association

**ARTICLE XIX - DESTRUCTION OF LEASED PREMISES**

Section 19.01 Total or Partial Destruction  
Section 19.02 Partial Destruction of Shopping Center

**ARTICLE XX - EMINENT DOMAIN**

Section 20.01 Total Condemnation of Leased Premises  
Section 20.02 Partial Condemnation  
Section 20.03 Total Condemnation of Parking Area  
Section 20.04 Partial Condemnation of Parking Area  
Section 20.05 Owner's Damages  
Section 20.06 Tenant's Damages  
Section 20.07 Condemnation of Less than a Fee

**ARTICLE XXI - DEFAULT OF TENANT**

Section 21.01 Right to Re-enter  
Section 21.02 Right to Relet  
Section 21.03 Legal Expenses  
Section 21.04 Waiver of Jury Trial and Counterclaims  
Section 21.05 Waiver of Rights of Redemption

**ARTICLE XXII - ACCESS BY OWNER**

Section 22.01 Right of Entry  
Section 22.01 Excavation

**ARTICLE XXIII - TENANTS PROPERTY**

Section 23.01 Taxes on Leasehold  
Section 23.02 Loss and Damage  
Section 23.03 Notice by Tenant

**ARTICLE XXIV - HOLDING OVER, SUCCESSORS**

Section 24.01 Holding Over  
Section 24.02 Successors

**ARTICLE XXV - QUIET ENJOYMENT**

Section 25.01 Owner's Covenant

**ARTICLE XXVI - MISCELLANEOUS**

- Section 26.01 Waiver
- Section 26.02 Accord and Satisfaction
- Section 26.03 Entire Agreement
- Section 26.04 No Partnership
- Section 26.05 Force Majeure
- Section 26.06 Notices
- Section 26.07 Captions and Section Numbers
- Section 26.08 Tenant Defined, Use of Pronoun
- Section 26.09 Broker's Commission
- Section 26.10 Partial Invalidity
- Section 26.11 No Option
- Section 26.12 Recording
- Section 26.13 Rider
- Section 26.14 Notices
- Section 26.15 Compliance with Anti-Terrorism Laws
- Section 26.16 Patriot Act
- Section 26.17 Option to Renew

THIS INDENTURE OF LEASE, made on this June 24th, 2019 by Lancaster  
Associates L.L.C., herein called "Owner" and "The City of Wilmington, Delaware, a municipal corporation", herein  
called "Tenant".

WITNESSETH:  
ARTICLE I  
GRANT AND TERM

Section 1.01 LEASED PREMISES.

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant  
to be observed and performed, the Owner demises and leases to the Tenant and Tenant rents from Owner, those certain  
premises, "AS IS" "WHERE IS", now or hereafter to be erected in the Westside Plaza Shopping Center (herein called the  
"Shopping Center") in Wilmington (City), New Castle (County), Delaware (State), which premises consists of a store  
having exterior measurements of approximately 6,000 sq.ft. known as 2801 Suite I Lancaster Avenue, Wilmington,  
Delaware, 19805. Said square footage shall be equal to 19% of the total square feet of the subject Shopping Center.

Section 1.02 USE OF ADDITIONAL AREAS.

The use and occupation by the Tenant of the leased premises shall include the use in common with others entitled  
thereto of the common areas, employees' parking areas, service roads, loading facilities, sidewalks and customer car  
parking areas, the owner, subject however to other terms and conditions of this Agreement and to reasonable rules and  
regulations for the use thereof as prescribed from time to time by the Owner.

Section 1.03 COMMENCEMENT AND ENDING DATE OF TERM.

The term of this Lease and Tenant's obligation to pay rent hereunder shall commence on April 1, 2019. The term  
of this lease shall be One (1) year and shall end on the last day of March, 2020, as said term "Lease Year" is hereinafter  
defined.

Section 1.04 LEASE YEAR DEFINED.

The term "Lease Year" as used herein shall mean a period of twelve consecutive full calendar months. The first  
Lease year shall begin on the date of commencement of the term hereof if the date of commencement of the term hereof  
shall occur on the first day of a calendar month; if not, then the first Lease year shall commence upon the first day of the  
calendar month next following the date of commencement of the term hereof. Each succeeding Lease year shall  
commence upon the anniversary date of the first Lease year.

Section 1.05 FAILURE OF TENANT TO OPEN. N/A

Section 1.06 EXCUSE OF OWNER'S PERFORMANCE.

Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or  
neglect of the Owner, the Owner shall not be deemed in default with respect to the performance of any of the terms,  
covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation,  
invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to  
obtain any material, service or financing, through Act of God or other cause beyond the control of the Owner.

Section 1.07 JOINT OPENING. N/A

Tenant shall cooperate in an endeavor to effect a joint opening of the Shopping Center and accordingly if so  
requested by Owner in writing, will delay the opening of its store for a period not to exceed thirty (30) days from the date  
it otherwise would have opened its store for business; but if Tenant does so at the written request of the Owner then,  
notwithstanding any provision to the contrary herein continued, the term of this Lease and Tenant's obligation to pay rent  
shall commence upon the date of said joint opening.

ARTICLE II  
RENT

Section 2.01 MINIMUM RENT.

Tenant agrees to pay to Owner at the office of:  
(PLEASE MAKE ALL CHECKS PAYABLE TO "LANCASTER ASSOCIATES, L.L.C.")  
c/o Financial & Consulting Services  
2126 W. Newport Pike, Suite 200  
Wilmington, DE 19804

without any prior demand therefore and without any deduction or set-off whatsoever, and as fixed minimum rent in the  
amount of Sixty Seven Thousand Five Hundred (\$67,500.00) Dollars payable in equal monthly installments of Five  
Thousand Six Hundred Twenty Five (\$5,625.00) Dollars each.

If the term shall commence upon a day other than the first day of a calendar month, then Tenant shall pay, upon  
the commencement date of the term, a pro-rata portion of the fixed per diem basis with respect to the fractional calendar  
month preceding the commencement of the first lease year hereof, together with the first full month rental payment.  
Tenant shall give written notice at least 120 days prior to the exploration of any terms of his intent to exercise any options  
hereof.

Section 2.02 PERCENTAGE RENT. N/A

Section 2.03 GROSS RECEIPTS DEFINED. N/A

Section 2.04 REAL ESTATE TAXES. ( 19% OF TOTAL).

(a) Tenant agrees to pay to Landlord each year during the term hereof, as additional rent, Tenant's Proportionate Share (as hereinafter defined) of Real Estate Taxes (as hereinafter defined) in the manner provided in Section (d) hereof.

(b) **REAL ESTATE TAXES**, as used herein, shall mean all taxes, assessments, and public charges of every kind and nature whatsoever, general and special extraordinary as well as ordinary, foreseen and unforeseen, which may be levied, assessed or imposed upon the land, buildings, and all other improvements of the Premises, including all school taxes and sewer taxes and charges, and all costs and fees, including attorney's fees, incurred by Landlord in contesting any of the above and/or negotiating with public authorities as to any of the above.

(c) **TENANT'S PROPORTIONATE SHARE** of Real Estate Taxes shall mean the percentage that the total square footage of floor area constructed gross leasable floor area of the buildings comprising the Premises determined as of the beginning of each Lease Year during the term hereof multiplied by the amount of Real Estate Taxes assessed during the calendar year in which said Lease Year commences. If said Lease Year shall be less than twelve (12) months, then Tenant's Proportionate Share of Real Estate Taxes shall be the amount calculated above multiplied by a fraction the numerator of which shall be the number of days in said Lease Year and the denominator of which shall be Three Hundred Sixty (360).

(d) **TENANT'S ESTIMATED SHARE OF REAL ESTATE TAXES** shall be paid in equal quarterly installments on or before the first day of each calendar month, in advance, as additional rent. For the Lease Year following the initial Lease Year of the term hereof, and for each Lease Year thereafter, Tenant's Estimated Share of Real Estate Taxes shall be adjusted upwards or downwards to reflect Tenant's Proportionate Share of Real Estate Taxes for the preceding Lease Year, said adjusted figure to be paid in equal quarterly installments on the first day of each month, in advance, as additional rent.

Upon receipt of all Real Estate Tax bills attributable to the Premises for any calendar year during the term hereof, Landlord shall furnish Tenant with a written statement of the amount of Tenant's Proportionate Share of Real Estate Taxes for the Lease Year in question, together with a statement detailing any adjustment in Tenant's Estimated Share of Real Estate Taxes. Tenant shall pay to Landlord within thirty (30) days of the date of said written statement the amount, if any, by which Tenant's Proportionate Share of Real Estate Taxes exceeds Tenant's Estimated Share of Real Estate Taxes for said Lease Year, exceeds Tenant's Proportionate Share of Real Estate Taxes. Should the taxing authorities include in such Real Estate Taxes the value of any improvements made by the Tenant or include machinery, equipment, fixtures, inventory or other personal property or assets of Tenant, then Tenant shall also pay the entire Real Estate Taxes, for such items. Tenant shall pay, before any fine, penalty, interest or costs may be added thereto for the non-payment thereof, any governmental tax or charge (other than income taxes) levied, assessed or imposed, by any governmental authority acting under any present or future law on account of or upon the receipt by Landlord or rents, business use and occupancy tax herein reserved.

- For the purposes of Sections 2.04, 10.01, 13.02, Tenant shall pay a fixed \$2.15 per square foot for Tenant's proportionate share of R.E. Taxes, Insurance and Common Area Maintenance.

Section 2.05 ADDITIONAL RENT.

The Tenant shall pay as additional rent any money required to be paid pursuant to Sections 2.04, 10.01, 12.01, 12.02, 13.02, 13.04, 13.05, and 14.01, and all other sums of money or charges required to be paid by Tenant under Lease, whether or not the same be designated "additional rent". If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectable as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Owner.

Section 2.06 PAST DUE RENT AND ADDITIONAL RENT.

If Tenant shall fail to pay, when the same is due and payable, any rent or any additional rent, or amounts or charges of the character described in Section 2.05 hereof, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of two per cent (2%) per month for delinquent payments after ten (10) days from the first of the month.

ARTICLE III  
RECORDS AND BOOKS OF ACCOUNT

Section 3.01 TENANT'S RECORDS. N/A

Section 3.02 REPORTS BY TENANT N/A

ARTICLE IV  
AUDIT

Section 4.01 RIGHT TO EXAMINE BOOK. N/A

Section 4.02 AUDIT. N/A

ARTICLE V  
CONSTRUCTION, ALTERATION, RELOCATION AND FINANCING  
OF IMPROVEMENTS AND ADDITIONS THERETO

Section 5.01 OWNER'S OBLIGATION. N/A

**Section 5.02 PARKING FACILITIES.**

The Owner shall construct upon the Shopping Center site at its own cost, access roads, footways, and parking lots or facilities.

**Section 5.03 CHANGES AND ADDITIONS TO BUILDINGS.**

Owner hereby reserves the right at any time to make alterations or additions to and to build additional stories on the building in which the premises are contained and to build adjoining the same. Owner also reserves the right to construct other buildings or improvements in the Shopping Center from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same and to construct double deck or elevated parking facilities.

**Section 5.04 FINANCING.**

The Owner shall not be obligated to proceed with the construction of the leased premises unless and until financing acceptable to Owner is obtained. Should such financing not be obtainable within six (6) months after completion of final plans and specifications, Owner may so notify Tenant in writing, and this Lease shall thereupon cease and terminate and each of the parties hereto shall be released and discharged from any and all liability and responsibility hereunder. If Owner can obtain financing only upon the basis of modifications of the terms and provisions of this Lease, the Owner shall have the right to cancel this Lease, if the Tenant refuses to approve in writing any such modification within thirty days after Owner's request therefore, which request may not be made after delivery of possession. If such right to cancel is exercised this Lease shall thereafter be null and void, any money or security deposited hereunder shall be returned to Tenant, and neither party shall have any liability to the other by reason of such cancellation.

**Section 5.05 RIGHT TO RELOCATE.**

Owner reserves the right at any time to relocate the various buildings, automobile parking areas, and other common areas.

## ARTICLE VI CONDUCT OF BUSINESS BY TENANT

**Section 6.01 USE OF PREMISES.**

Tenant shall use the leased premises solely for the purpose of conducting the business of a local broadcasting studio for publicaccess/leased access TV programming. Tenant shall occupy the leased premises within thirty (30) days after the date of the notice provided for in Section 1.03 hereof, and shall conduct continuously in the leased premises the business above stated. Tenant will not use or permit, or suffer the use of, the leased premises for any other business or purpose. Tenant shall not conduct catalogue sales in or from the leased premises except of merchandise which Tenant is permitted to sell "over the counter" in or at the leased premises pursuant to the provisions of this Section 6.01.

**Section 6.02 OPERATION OF BUSINESS.**

Tenant shall operate all of the leased premises during the entire term of this Lease with due diligence and efficiency so as to produce all of the gross sales which may be produced by such manner of operation, unless prevented from doing so by causes beyond Tenant's control. Subject to inability by reason of strikes or labor disputes, Tenant shall carry at all times in said premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Owner and Tenant. Tenant shall conduct its business in the leased premises during the regular customary days and hours for such type of business in the City or trade area in which the Shopping Center is located, and will keep the leased premises open for business during the same days, nights and hours N/A store located in the Shopping Center, or during the days nights and hours agreed upon by a majority of the members of Merchants Association provided for in Section 18.03 hereof. Tenant shall install and maintain at all times displays of merchandise in the display windows (if any) of the leased premises. Tenant shall keep the display windows and signs, if any, in the leased premises well lighted during the hours from sundown to 11:00 o'clock p.m., unless prevented by causes beyond the control of Tenant.

**Section 6.03 COMPETITION**

During the term of this Lease, Tenant shall not directly or indirectly engage in any similar or competing business within a radius of three miles from the outside boundary of the Shopping Center. Tenant shall not perform any acts or carry on any practices which may injure the building or be a nuisance or menace to other tenants in the Shopping Center.

**Section 6.04 STORAGE, OFFICE SPACE.**

Tenant shall warehouse, store and/or stock in the leased premises only such goods, wares and merchandise as Tenant intends to offer for sale or retail at, in, from or upon the leased premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant, if any, not located in the Shopping Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the leased premises as is from time to time reasonably required for Tenant's business in the leased premises. No auction, fire or bankruptcy sales may be conducted in the leased premises without the previous written consent of Owner.

## ARTICLE VII OPERATION OF CONCESSIONS

**Section 7.01 CONSENT OF OWNER.**

Tenant shall not permit any business to be operated in or from the leased premises by any concessionaire or licensee without the prior written consent of Owner.

## ARTICLE VIII SECURITY DEPOSIT

### Section 8.01 AMOUNT OF DEPOSIT.

Tenant contemporaneously with the execution of this Lease, will deposit with Owner the sum of (\$5,000.00) Dollars. Said deposit shall be held by Owner, without liability for interest, as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease by said Tenant to be kept and performed during the term hereof. If at any time during the term of this Lease any of the enter herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Owner hereunder shall be overdue and unpaid, then Owner may, at the option of Owner (but Owner shall not be required to), appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum.

### Section 8.02 USE AND RETURN OF DEPOSIT.

In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, then the Owner at his option may appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate the Owner for loss or damage sustained or suffered by Owner due to such breach on the part of Tenant. Should the entire deposit, or any portion thereof, be appropriated and applied by Owner for the payment of overdue rent or other sums due and payable to Owner by Tenant hereunder, then Tenant shall, upon the written demand of Owner, forthwith remit to Owner a sufficient amount in cash to restore said security to the original sum deposited, and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute breach of this lease. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by Tenant to Owner hereunder, the said deposit shall be returned in full to Tenant at the end of the term of this Lease, or upon the earlier termination of this Lease.

### Section 8.03 TRANSFER OF DEPOSIT.

Owner may deliver the funds deposited hereunder by Tenant to the purchaser of Owner's interest in the leased premises, in the event that such interest be sold, and thereupon Owner shall be discharged from any further liability with respect to such deposit.

## ARTICLE IX PARKING AND COMMON USE AREAS AND FACILITIES

### Section 9.01 CONTROL OF COMMON AREAS BY OWNER

All automobile parking areas, driveways, entrances and exits thereto, and other facilities furnished by Owner in or near the Shopping Center, including employee parking areas, the truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, first-aid stations, comfort stations and other areas and improvements provided by Owner for the general use, uncommon, of tenants, their officers, agents, employees and customers, shall at all times be subject to the exclusive control and management of Owner, and Owner shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this Article. Owner shall have the right to construct, maintain and operate lighting facilities on all said areas and improvements; to police the same; from time to time to change the area, level location and arrangement of parking areas and other facilities hereinabove referred to; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to enforce parking charges (by operation of meters or otherwise), with appropriate provisions for free parking ticket validating by Tenants; to close all or any portion of said areas or facilities to such extent as may, in the opinion of Owner's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any portion of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, the Owner shall determine to be advisable with a view to the improvement of the convenience and use thereof by Tenants, their officers, agents, employees and customers. Owner will operate and maintain the common facilities referred to above in such discretion, Owner shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common areas and facilities.

\*\*\* Off-street parking is available at the Greenhill Avenue Car Wash. This is intended to relieve parking issues at the Center. Tenants and their staff will be permitted to park in the front retail parking lot only if street parking is not available or the alternate parking supplied by Landlord is not available. Tenants are urged to use the alternate parking facilities to allow ample parking in the Center's lot for clients and customers to the Center.

Off-site parking is located at 111 Greenhill Avenue known as the Greenhill Car Wash. The gates are open between the hours of 7:00-7:30 a.m. and 10:30-11:00 p.m. seven days a week, weather permitting. Should the gates be locked, indicating the wash is closed, the combination to the lock is 2704. The Tenant that unlocks the gate shall also be responsible for locking/securing it. We request that you supply management with a list of the names, make, model and vehicle color of the employees assigned to the lot. Parking rules are to be enforced by each Tenant through on site management and will be randomly monitored by West Side Plaza management.

The additional parking is a courtesy paid for by WestSide Plaza in an effort to support customer activity within the Center and benefit all Tenants. We also urge all employees and staff to utilize street parking first. This will also help to alleviate the parking situation within the lot and allow the availability of more parking for clients/customers visiting the Center.

Management will not be responsible for vehicles left in the lot during bad weather. To ensure Tenant safety, once the lot has been plowed, plowed-in vehicles owners are not permitted to shovel the snow back into the lot. Additional snow removal caused by such vehicles will be billed to the Tenant. In the event the lot is plowed after the Center's normal business hours, the snowplow company has been authorized to tow any vehicle preventing proper snow removal

Section 9.02 LICENSE.

All common areas and facilities not within the leased premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of such areas be diminished, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or basement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

ARTICLE X  
COST OF MAINTENANCE OF COMMON AREAS

Section 10.01 TENANT TO BEAR PRO RATA SHARE OF EXPENSES.

(a) In each Lease year, Tenant will pay to Owner, in addition to the rentals specified in Article II hereof, as further additional rent, subject to the limitation, hereinafter set forth, a proportion of the Shopping Center's operating cost, hereinafter defined, based upon the ratio of the square feet of the leased premises to the total square feet of all the building space leased in the Shopping Center, except that for the purpose of this computation each two (2) square feet of basement or second floor space shall be counted as one square foot.

(b) For the purposes of this Section 10.01 the "Shopping Center's operating cost" means the total cost and expense incurred in operating and maintaining the common facilities, hereinafter defined, actually used or available for use by Tenant and the employees, agents, servants, customers and other invitee of Tenant, excluding only items of expense commonly known and designated as carrying charges, but specifically including, without limitation, gardening and landscaping, the cost of public liability and property damage insurance, real estate taxes and assessments, repairs, line painting, lighting, sanitary control, removal of snow, trash, rubbish, garbage and other refuse, depreciation on machinery and equipment used in such maintenance, the cost of personnel to implement such services, to direct parking, and to police the common facilities and 19% of all the foregoing costs (excluding real estate taxes and assessments) to cover the Owner's administrative and overhead costs. "Common Facilities" means all areas, space, equipment and special services provided by Owner for the common or joint use and benefit of the occupants of the Shopping Center, their employees, agents, servants, customers and other invitee, including without limitation parking areas, access roads, driveways, retaining walls, landscaped areas, truck services or tunnels, loading docks, pedestrian malls, courts, stairs, ramps and sidewalks, comfort and first aid stations, washrooms and parcel pick-up stations.

(c) The additional rent provided to be paid in this Section 10.01 shall be computed on the basis of periods of three (3) consecutive calendar months, commencing and ending on such dates as may be designated by Owner, and shall be paid by Tenant promptly upon receipt of quarterly bills therefore from Owner without any deduction or set-off whatever.

(d) Changes in any particular floor area occurring during any quarterly period shall be effective on the first day of the next succeeding quarterly period, and the amount of any floor area in effect for the whole of any quarterly period shall be the average of the total amounts in effect on the first day of each calendar month in such quarterly period.

\* For the purposes of Sections 2.04, 10.01, 13.02, Tenant shall pay a fixed \$2.15 per square foot for Tenant's proportionate share of R.E. Taxes, Insurance and Common Area Maintenance for the initial term.

ARTICLE XI  
SIGNS, AWNINGS, CANOPIES, FIXTURES, ALTERATIONS

Section 11.01 INSTALLATION BY TENANT.

All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any trade fixture, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining Owner's written approval and consent. Tenant shall present to the Owner plans and specifications for such work at the time approval is sought.

Section 11.02 REMOVAL AND RESTORATION BY TENANT.

All alterations, decorations, additions and improvements made by the Tenant, or made by the Owner on the Tenant's behalf by agreement under this Lease, shall remain the property of the Tenant for the term of the Lease, or any extension or renewal thereof. Such alterations, decorations, additions and improvements shall not be removed from the premises prior to the end of the term hereof without prior consent in writing from the Owner. Upon expiration of this Lease, or any renewal term thereof, the Tenant shall remove all such alterations, decorations, additions and improvements, and restore the Leased premises as provided in Section 12.03 hereof. If the Tenant fails to remove such alterations, decorations, additions, and improvements and restore the leased premises, then upon the expiration of this Lease, or any renewal thereof, and upon the Tenant's removal from the premises, all such alterations, decorations, additions and improvements shall become the property of the Owner.

Section 11.03 TENANT SHALL DISCHARGE ALL LIENS.

Tenant shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the leased premises, and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after written request by Owner.

#### Section 11.04 SIGNS, AWNINGS AND CANOPIES.

Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the leased premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the leased premises without first obtaining Owner's written approval and consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times.

### ARTICLE XII MAINTENANCE OF LEASED PREMISES

#### Section 12.01 MAINTENANCE BY TENANT.

Tenant shall at all times keep the leased premises (including maintenance of exterior entrances, all glass and show window moldings) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, escalators, elevators, and any air conditioning system) in good order, condition and repair (including reasonably periodic painting as determined by Owner), damage by unavoidable casualty excepted, except for structural portions of the premises which shall be maintained by Owner, but if Owner is required to make repairs to structural portions by reason of Tenant's negligent acts or omission to act, Owner may add the cost of such repairs to the rent which shall thereafter become due. Tenant shall be responsible for maintaining a quarterly service contract on the HVAC equipment.

#### Section 12.02 MAINTENANCE BY OWNER.

If Tenant refuses or neglects to repair property as required hereunder and to the reasonable satisfaction of Owner as soon as reasonably possible after written demand, Owner may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Owner's costs for making such repairs plus twenty percent for overhead, upon presentation of bill therefore, as additional rent. Provided Tenant has a valid service contract and has maintained the equipment with quarterly service visits, Landlord shall be responsible for the replacement of HVAC equipment.

#### Section 12.03 SURRENDER OF PREMISES.

At the expiration of the tenancy hereby created, Tenant shall surrender the leased premises in the same condition as the leased premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty excepted, and shall surrender all keys for the leased premises to Owner at the place then fixed for the payment of rent and shall inform Owner of all combinations on locks, safes and vaults, if any, in the leased premises. Tenant shall remove all its trade fixtures, and any alterations or improvements as provided in Section 11.02 hereof, before surrendering the premises as aforesaid and shall repair any damage to the leased premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

#### Section 12.04 RULES AND REGULATIONS.

The rules and regulations appended to this Lease are hereby made a part of this Lease, and Tenant agrees to comply with and observe the same. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the manner as if the same were obtained herein as covenants. Owner reserves the right from time to time to amend or supplement said rules and regulations and to adopt and promulgate additional rules and regulations applicable to leased premises and the Shopping Center. Notice of such additional rules and regulations, and amendments and supplements, if any shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all such rules and regulations and amendments thereto and supplements thereof, provided the same shall apply uniformly to all tenants of the Shopping Center.

### ARTICLE XIII INSURANCE AND INDEMNITY

#### Section 13.01 LIABILITY INSURANCE.

Tenant shall, during the entire term hereof, keep in full force and effect a policy of public liability and property damage insurance with respect to the leased premises, and the business operated by Tenant and any subtenants of Tenant in the leased premises in which the limits of public liability shall be less than \$500,000.00 per person and \$1,000,000.00 per accident and in which the property damage liability shall be no less than \$500,000.00. The policy shall name Owner, any person, firms or corporations designated by Owner, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Owner ten days prior written notice. The insurance shall be an insurance company approved by Owner and a copy of the policy or a certificate of insurance shall be delivered to Owner. Tenant shall be required to supply Landlord with an endorsement to their insurance policy naming Lancaster Associates, LLC and Financial & Consulting Services, Inc. as additional insured.

#### Section 13.02 FIRE INSURANCE PREMIUM (19% OF TOTAL)

(a) Tenant agrees to pay monthly as so much additional rent, Tenant's proportionate share of Landlord's total cost of insurance policies including but not limited to the following coverage's: liability, fire, extended coverage, difference in conditions, boiler and machinery, sprinkler, vandalism and malicious mischief, loss of rent and rent insurance which insures the Premises other than such costs relating to Common Areas. Tenant's Proportionate Share shall mean the percentage that the total square footage of floor area in the Demised Premises bears to the total square footage of the constructed gross leasable area of the buildings comprising the Premises.

(b) TENANT'S PROPORTIONATE SHARE OF INSURANCE EXPENSE shall be paid in equal monthly installments on or before the first day of every month, in advance, as so much additional rent. For the calendar year

following the commencement of the term hereof, and for each calendar year thereafter, Tenant's Estimated Share of Insurance shall be adjusted upwards or downwards to reflect Tenant's true proportionate share of the actual cost of insurance attributable hereto for the preceding calendar year, and adjusted figures to be paid in equal monthly installments on the first day of every month, in advance, as so much additional rent.

(c) Upon receipt of all insurance bills attributable hereto for any calendar year during the term hereof, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's Proportionate Share of Insurance for such year in question, together with a statement detailing any adjustment in Tenant's Estimated Share of Insurance, as noted herein. If the term of this Lease shall begin or end other than on the first or last day of a calendar year, these charges shall be billed and adjusted on the basis of such fraction of a calendar year.

- For the purposes of Sections 2.04, 10.01, 13.02, Tenant shall pay a fixed \$2.15 per square foot for Tenant's proportionate share of R.E. Taxes, Insurance and Common Area Maintenance for the initial term.

#### Section 13.03 INDEMNIFICATION OF OWNER.

Tenant will indemnify Owner and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the leased premises, or the occupancy or use by tenant of the leased premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees or concessionaires. In case Owner shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Owner harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Owner in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Owner in enforcing the covenants and agreements in this Lease.

#### Section 13.04 PLATE GLASS.

Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the leased premises. Owner may insure and keep insured, at Tenant's expense, all plate and other glass in the leased premises for and in the name of Owner. Bills for the premiums therefore shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.

#### Section 13.05 BOILER INSURANCE. N/A.

### ARTICLE XIV UTILITIES

#### Section 14.01 UTILITY CHARGES.

Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in the leased premises. Should Owner elect to supply the water, gas, heat, electricity or any other utility used or consumed in the leased premises, Tenant agrees to purchase and pay for the same as additional rent at the applicable rates filed by the Owner with the proper regulatory authority. In no event shall Owner be liable for an interruption or failure in the supply of any such utilities to the leased premises.

### ARTICLE XIV OFFSET STATEMENT, ATTORNMENT SUBORDINATION

#### Section 15.01 OFFSET STATEMENT.

Within ten days after request therefore by Owner, or in the event that upon any sale, assignment or hypothecation of the leased premises and/or the land thereunder by Owner an offset statement shall be required from Tenant; Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to Owner, certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Tenant.

#### Section 15.02 ATTORNMENT.

Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Owner covering the leased premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Owner under this Lease.

#### Section 15.03 SUBORDINATION.

Upon request of the Owner, Tenant will subordinate its rights hereunder to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the land and/or buildings of which the leased premises are a part or against any buildings hereafter placed upon the land of which the leased premises are a part, and to all advances made or hereafter to be made upon the security thereof.

#### Section 15.04 ATTORNEY IN FACT.

The Tenant, upon request of any party in interest, shall execute promptly such instruments or certificates to carry out the intent of Sections 15.02 and 15.03 above as shall be requested by the Owner. The Tenant hereby irrevocably appoints the Owner as attorney in fact for the Tenant with full power and authority to execute and deliver in the name of the Tenant any such instruments or certificates. If fifteen (15) days after the date of a written request by Owner to execute such instruments, the Tenant shall not have executed the same, the Owner may, at its option, cancel this Lease without incurring any liability on account thereof, and the term hereby granted is expressly limited accordingly.

## ARTICLE XVI ASSIGNMENT AND SUBLetting

### Section 16.01 CONSENT REQUIRED.

Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the leased premises, without the prior written consent of Owner in each instance. Such consent shall not be unreasonably withheld by Owner to any assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease be assigned, or if the leased premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-Tenant or occupant as Tenant of covenants on the part of Tenant herein contained. Notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the term, covenants and conditions of this Lease.

### Section 16.02 CORPORATE OWNERSHIP.

If at any time during the term of this Lease any part or all of the corporate shares of Tenant shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in the present effective voting control of Tenant by the person or persons owning a majority of said corporate shares on the date of this Lease, Tenant will promptly notify Owner in writing of such change, and Owner may terminate this Lease at any time after such change in control by giving Tenant ninety (90) days prior written notice of such termination. Any Change in corporate ownership shall not be unreasonably withheld by Owner.

## ARTICLE XVII WASTE, GOVERNMENTAL REGULATIONS

### Section 17.01 WASTE OR NUISANCE.

Tenant shall not commit or suffer to be committed any waste upon the leased premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other Tenant in the building in which the leased premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any person within five hundred feet of the boundaries of the Shopping Center.

### Section 17.02 GOVERNMENTAL REGULATIONS.

Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force.

## ARTICLE XVIII ADVERTISING, MERCHANTS ASSOCIATIONS

### Section 18.01 CHANGE OF NAME.

Tenant agrees not to change the advertised name of the business operated in the leased premises without the written permission of Owner.

### Section 18.02 SOLICITATION OF BUSINESS.

Tenant and Tenant's employees and agents shall not solicit business in the parking or other common areas, nor shall Tenant distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

### Section 18.03 MERCHANTS ASSOCIATION. N/A

## ARTICLE XIX DESTRUCTION OF LEASED PREMISES

### Section 19.01 TOTAL OR PARTIAL DESTRUCTION.

If the leased premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole or in part, Owner shall at its own expense cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence, the premises shall be rendered untenable only in part, Owner shall at its own expense cause the damage to be repaired, and the fixed minimum rent meanwhile shall be abated proportionately as to the portion of the premises rendered untenable. If the premises shall be rendered wholly untenable by reason of such occurrence the owner shall at its own expense cause such damage to be repaired, and the fixed minimum rent meanwhile shall abate until the leased premises have been restored and rendered tenable, or Owner may at its election, terminate this Lease and the tenancy hereby created by giving to Tenant within the sixty (60) days following the date of said occurrence, written notice of Owner's election so to do and in event of such termination rent shall be adjusted as of such date. Nothing in this Section shall be construed to permit the abatement in whole or in part of the percentage rent, but for the purpose of Section 2.02 hereof the computation of percentage rent shall be based upon the revised minimum rent as the same be abated pursuant to this Section 19.01.

### Section 19.02 PARTIAL DESTRUCTION OF SHOPPING CENTER.

In the event that fifty percent (50%) or more of the rentable area of the Shopping Center shall be damaged or destroyed by fire or other cause, notwithstanding that the leased premises may be unaffected by such fire or other cause,

Owner may terminate this Lease and the tenancy hereby created by giving to Tenant five (5) days prior written notice of Owner's election so to do which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

## ARTICLE XX EMINENT DOMAIN

### Section 20.01 TOTAL CONDEMNATION OF LEASED PREMISES.

If the whole of the leased premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to date and Tenant shall have no claim against Owner nor the condemning authority for other value of any unexpired term of this Lease.

### Section 20.02 PARTIAL CONDEMNATION

If any part of the leased premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the leased premises unsuitable for the business of the Tenant, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding. Tenant shall have no claim against Owner nor the condemning authority for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the premises unsuitable for the business of the tenant, then Owner shall promptly restore the leased premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent.

### Section 20.03 TOTAL CONDEMNATION OF PARKING AREA.

If the whole of the common parking areas in the Shopping Center shall be acquired or condemned as aforesaid, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding unless Owner shall take immediate steps to provide other parking facilities substantially equal to the previously existing ratio between the common parking areas and the leased premises, and such substantially equal parking facilities shall be provided by Owner at its own expense within ninety (90) days from the date of acquisition. In the event that Owner shall provide such other substantially equal parking facilities, then this Lease shall continue in full force and effect without any reduction or abatement of rent.

### Section 20.04 PARTIAL CONDEMNATION OF PARKING AREA.

If any part of the parking area in the Shopping Center shall be acquired or condemned as aforesaid, and if, as the result thereof the ratio of square feet of parking field to square feet of the sales area of the entire Shopping Center building is reduced to a ratio below two to one, then the term of this Lease shall cease and terminate upon the vesting of title in such proceeding, unless the Owner shall take immediate steps toward increasing the parking ratio to a ratio in excess of two to one, in which event this Lease shall be unaffected and remain in full force and effect without any reduction or abatement of rent. In event of termination of the Lease as aforesaid, Tenant shall have no claim against Owner nor the condemning authority for the value of any unexpired term of this Lease and rent shall be adjusted to the date of said termination.

### Section 20.05 OWNER'S DAMAGES.

In the event of any condemnation or taking as aforesaid, whether whole or partial, the Tenant shall not be entitled to any part of the award paid for such condemnation and Owner is to receive the full amount of such award, the tenant hereby expressly waiving any right or claim to any part thereof.

### Section 20.06 TENANT'S DAMAGES.

Although all damages in the event of any condemnation are to belong to the Owner whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the leased premises, tenant shall have the right to claim and recover from the condemning authority, but not from Owner, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

### Section 20.07 CONDEMNATION OF LESS THAN A FEE.

In the event of a condemnation of a leasehold interest in all or a portion of the Lease premises without the condemnation of the fee simple title also, this Lease shall not terminate and such condemnation shall not excuse tenant from full performance of all of its covenants hereunder, but Tenant in such event shall be entitled to present or pursue against the condemning authority its claim for and to receive all compensation or damages sustained by it by reason of such condemnation, and Owner's right to recover compensation or damages shall be limited to compensation for and damages if any, to its reversionary interest; it being understood however, that during such time as tenant shall be out of possession of the Leased premises by reason of such condemnation, the Lease shall not be subject to forfeiture for failure to observe and perform those covenants not calling for the payment of money. In the event the condemning authority shall fail to keep the premises in the state of repair required hereunder, or to perform any other covenant not calling for the payment of money. Tenant shall have ninety (90) days after the restoration of possession to it within which to carry out its obligations under such covenant or covenants. During such time as Tenant shall be out of possession of the leased premises by reason of such leasehold condemnation, Tenant shall pay to Owner, in lieu of the minimum and percentage rents provided for hereunder, an annual rent equal to the average annual minimum and percentage rents paid by Tenant for the period from the commencement of the term until the condemning authority shall take possession, or during the preceding three full calendar years, whichever period is shorter. At any time after such condemnation proceedings are commenced, Owner shall have the right, at its option, to require Tenant to assign to Owner all compensation and damages

received pursuant to said assignment to be applied first to the payment of rents and all other sums from time to time payable by Tenant pursuant to the terms of this Lease as such sums fall due, and the remainder, if any, to be payable to Tenant at the end of the term hereof or on restoration of possession to Tenant, whichever shall first occur, it being understood and agreed that such assignment shall not relieve Tenant of any of its obligations under this Lease with respect to such rents, and other sums except as the same shall be actually received by Owner.

## ARTICLE XXI DEFAULT OF THE TENANT

### Section 21.01 RIGHT TO RE-ENTER.

In the event of any failure of Tenant to pay any rental due hereunder within ten (10) days after the same shall be due, or any failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) days after written notice of such default shall have been given to Tenant, or if Tenant or an agent of Tenant shall falsify any report required to be furnished to Owner pursuant to the terms of the Lease, or if Tenant or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or take or have taken against Tenant or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or portion of Tenant's or any such guarantor's property, or if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon said premises, or suffer this Lease to be taken under any writ of execution, then Owner besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the leased premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

### Section 21.02 RIGHT TO RELET.

Should Owner elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease, make such alterations and repairs as may be necessary in order to Relet the premises, and Relet said premises or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Owner in its sole discretion may deem advisable; upon each such reletting all rentals received by the Owner from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Owner, second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of rent due hereunder from Tenant to Owner, second, to the payment of any costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, the residue, if any, shall be held by Owner and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Owner. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Owner shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Owner may at any time thereafter elect to terminate this Lease for such previous breach. Should Owner at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the leased premises, reasonable attorney's fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the leased premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Owner. In determining the rent which would be payable by Tenant hereunder, subsequent to default, the annual rent for each year of the unexpired term shall be equal to the average annual minimum and percentage rents paid by Tenant from the commencement of the term to the time of default, or during the preceding three full calendar years, whichever period is shorter.

### Section 21.03 LEGAL EXPENSES.

In case suit shall be brought for recovery of possession of the leased premises, for the recovery, of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established Tenant shall pay to Owner all expenses incurred theretofore, including a reasonable attorney's fee.

### Section 21.04 WAIVER OF JURY TRIAL AND COUNTERCLAIMS.

The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Owner and Tenant, Tenant's use or occupancy of the leased premises, and/or any claim of injury or damage. In the event Owner commences any proceedings for non-payment of rent, minimum rent, percentage rent or additional rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings. This shall not, however, be construed as a waiver of the Tenant's right to assert such claims in any separate action or actions brought by the Tenant.

### Section 21.05 WAIVER OF RIGHT REDEMPTION.

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of the leased premises, by reason of the violation by Tenant of any of the covenants or conditions of this Lease, or otherwise.

## ARTICLE XXII ACCESS BY OWNER

### Section 22.01 RIGHT OF ENTRY.

Owner or Owner's agents shall have the right to enter the leased premises at all times to examine the same, and to show them to prospective purchasers or lessees of the building, and to make such repairs, alterations, improvements or additions as Owner may deem necessary or desirable, and Owner shall be allowed to take all material into and upon said premises that may be required therefore without the same constituting an eviction of Tenant in whole or in part and the rent reserved shall in no way abate while said repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. During the six months prior to the expiration of term of this Lease or any renewal term, Owner may exhibit the premises to prospective tenants or purchasers, and place upon the premises the usual notices "To Let" or "For Sale" which notices tenant shall permit to remain thereon without molestation. If Tenant shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be necessary or permissible, Owner or Owner's agents may enter the same by a master key, or may forcibly enter the same, without rendering Owner such agents liable therefore, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however shall be deemed or construed to impose upon Owner any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or of any part thereof, except as otherwise herein specifically provided.

### Section 22.02 EXCAVATION.

If any excavation shall be made upon land adjacent to the leased premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the leased premises for the purpose of doing such work as Owner shall deem necessary to preserve the wall or the building of which the leased premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnification against Owner or diminution or abatement of rent.

## ARTICLE XXIII TENANT'S PROPERTY

### Section 23.01 TAXES ON LEASEHOLD.

Tenant shall be responsible for and shall pay before delinquency all municipal, county or state taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the leased premises by the Tenant.

### Section 23.02 LOSS AND DAMAGE.

Owner shall not be liable for any damage to property of Tenant or of others located on the leased premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Owner shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the leased premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Owner shall not be liable for any such damage caused by other tenants or persons in the leased premises, occupants of adjacent property, of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work. Owner shall not be liable for any latent defect in the leased premises or in the building of which they form a part except for a period of one (1) year from the date tenant takes possession of the leased premises. All property of Tenant kept or stored on the leased premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Owner harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier, unless such damage shall be caused by the willful act or gross neglect of Owner.

### Section 23.03 NOTICE BY TENANT.

Tenant shall give immediate notice to Owner in case of fire or accidents in the leased premises or in the building of which the premises are a part of defects therein or in any fixtures or equipment.

## ARTICLE XXIV HOLDING OVER, SUCCESSORS

### Section 24.01 HOLDING OVER.

Any hold over after the expiration of the term hereof, with the consent of the Owner, shall be construed to be a tenancy from month to month at the rents herein specified (pro-rated on a monthly basis) and shall otherwise be on the terms and conditions herein specified, so far as applicable.

### Section 24.02 SUCCESSORS.

All rights and liabilities herein given to, or imposed upon the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Owner in writing as provided in Section 16.01 hereof.

## ARTICLE XXV QUIET ENJOYMENT

### Section 25.01 OWNER'S COVENANT.

Upon payment by the tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the leased premises for the term hereby demised without hindrance or interruption by Owner or any other person or persons lawfully or equitably claiming by, through or under the Owner, subject, nevertheless, to the terms and conditions of this Lease.

## ARTICLE XXVI MISCELLANEOUS

### Section 26.01 WAIVER.

The waiver by Owner of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Owner shall not be deemed to be a waiver of any proceeding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Owner's knowledge of such proceeding breach at the time of acceptance of such rent. No covenant, term or conditions of this Lease shall be deemed to have been waived by Owner, unless such waiver be in writing by Owner.

### Section 26.02 ACCORD AND SATISFACTION.

No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompany any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

### Section 26.03 ENTIRE AGREEMENT.

This Lease and the Exhibits, and Rider, if any attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Owners and Tenant concerning the leased premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment change or addition to this Lease shall be binding upon Owner or Tenant unless reduced to writing and signed by them.

### Section 26.04 NO PARTNERSHIP.

Owner does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with Tenant.

### Section 26.05 FORCE MAJEURE.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 26.05 shall not operate to excuse Tenant from prompt payment of rent, additional rent or any other payments required by the terms of this Lease.

### Section 26.06 NOTICES.

Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed (a) if to Owner at the address first herein above given or at such other address as Owner may designate by written notice and (b) if to Tenant at the leased premises or at such other address as tenant shall designate by written notice.

### Section 26.07 CAPTIONS AND SECTION NUMBERS.

The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or described the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

### Section 26.08 TENANT DEFINED, USE OF PRONOUN.

The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a tenant herein, he the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Owner or Tenant shall be deemed a proper reference even though Owner or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations, the necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Owner or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

**Section 26.09 BROKER'S COMMISSION.**

Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, except as listed below, and each of the parties agrees to indemnify the other against, hold it harmless from all liabilities arising from any such claim (including, without limitation, the cost of counsel fees in connection therewith) except as follows: Landlord shall pay an amount equal to five percent (5%) of the gross rental on a monthly basis for the term of said Lease and any extensions thereof, to Financial & Consulting Services Inc.

**Section 26.10 PARTIAL INVALIDITY.**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or conditions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 26.11 NO OPTION.**

The submission of this Lease for examination does not constitute a reservation of or option for the leased premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by Owner and Tenant.

**Section 26.12 RECORDING.**

Tenant shall not record this Lease without the written consent of Owner, however, upon the request of either party hereto the other party shall join in the execution of a memorandum or so called "short form" of this lease for the purposes of recordation. Said memorandum or short form of this Lease shall describe the parties, the leased premises and the term of this Lease and shall incorporate this Lease by reference.

**Section 26.13 RIDER. N/A**

A rider consisting of (0) page, with sections numbered consecutively \_\_\_ through, \_\_\_ attached hereto and made a part hereof.

**Section 26.14 NOTICES.**

All notices shall be sent according to the terms of this Lease at the following address:

**TENANT:** City of Wilmington  
Louis L. Redding City/County Building  
800 French St. 9<sup>th</sup> Floor  
Wilmington, DE 19801

Contact: Hanifa Shabazz 302-576-2140  
[mbsmigh@wilmingtonde.gov](mailto:mbsmigh@wilmingtonde.gov)

**LANDLORD:** Lancaster Associates L.L.C.  
C/O Financial & Consulting Services, Inc.  
2126 W. Newport Pike, Suite 200  
Wilmington, DE 19804

Phone: 302-633-9134 Fax: 302-633-9135  
Email: [Debbie@financialandconsulting.com](mailto:Debbie@financialandconsulting.com) - Property maintenance  
[Wendi@financialandconsulting.com](mailto:Wendi@financialandconsulting.com) - Accounting

**Section 26.15 COMPLIANCE WITH ANTI-TERRORISM LAWS**

None of Tenant, Tenant Principals or any Person who Controls Tenant or Tenant Principal currently is identified by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") or otherwise qualifies as a Embargoed Person, and Tenant has implemented procedures to ensure that no Person who now or hereafter owns a direct or indirect equity interest in Tenant is an Embargoed Person or is Controlled by an Embargoed Person. None of Tenant or Tenant Principal is in violation of any applicable law relating to anti-money laundering or anti-terrorism, including, without limitation, those related to transacting business with Embargoed Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations (collectively, as the same may be amended from time to time, the "Patriot Act"). To the best of Tenant's knowledge, no employee at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person. Tenant has determined that Manager has implemented procedures approved by tenant to ensure that no employee at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person.

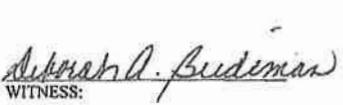
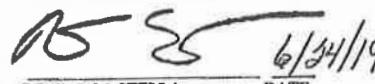
**Section 26.16 PATRIOT ACT**

Neither Tenant nor Tenant Principal shall (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the list maintained by OFAC and accessible through the OFAC website) that prohibits or limits any Landlord from making any advance or extension of credit or lease to Tenant or from otherwise conducting business with Tenant and Tenant Principal, or (b) fail to provide documentary and other evidence of Tenant's identity as may be requested by any Landlord at any time to enable any Landlord to verify Tenant's identity or to comply with any applicable law or regulation, including, without limitation, the Patriot Act. In addition, Tenant hereby

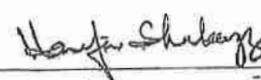
agrees to provide to Landlord any additional information that Landlord deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

IN WITNESS WHEREOF, Owner and Tenant have signed and sealed this Lease as of the day and year first written below.

LESSOR: Lancaster Associates L.L.C.

  
WITNESS:  6/24/19  
By: ROBERT M. STELLA: DATE

LESSEE: City of Wilmington, DE

  
WITNESS:  6/24/19  
By: - DATE

WITNESS: \_\_\_\_\_ By: \_\_\_\_\_ DATE

## ATTACHMENT C



B  
I  
I  
T  
O  
FINANCE - ACCOUNTS DIVISION  
LOUIS L. REDDING - 5TH FLOOR  
800 FRENCH STREET  
WILMINGTON, DE 19801-3537  
accountspayable@wilmingtonde.gov

Retain this purchase order for proof of tax  
exemption. Tax Exempt #51-0176414

V  
e  
n  
d  
o  
r  
LANCASTER ASSOCIATES LLC  
2126 W NEWPORT PIKE  
SUITE #200  
WILMINGTON DE 19084

## Purchase Order

Fiscal Year 2020 Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS.

Purchase  
Order #

200419-00

Delivery must be made within doors of  
specified destination.

S  
h  
i  
p  
T  
O  
CITY CLERK'S OFFICE  
CITY / COUNTY BLDG - 9TH FLOOR  
800 FRENCH STREET  
WILMINGTON, DE 19801-3537

Requested By: Akira Grenardo

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference			
Date Ordered		Vendor Number		Date Required		Freight Method/Terms		Department/Location	
07/11/2019		38351						120 CITY COUNCIL ADMIN	
Item#	Description/Part No.		Qty	UOM	Unit Price		Extended Price		
1	1 YEAR LEASE RENTAL AGREEMENT		1.0	EACH	\$60,000.00		\$60,000.00		
1	1 YEAR LEASE RENTAL AGREEMENT FOR TPO SITE \$5,625 PER MONTH (APRIL 1, 2019-MARCH 31, 2020)								
	23312300 - 55608 - 14TV2		\$60,000.00						

## ATTACHMENT D

## INVOICES AND REQUESTS FOR CHECK

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

## Invoice

Date	Invoice #
4/1/2019	Rent

040119

**Bill To**  
City of Wilmington  
Louis L. Redding City/County Building  
800 French St. 9th Floor  
Wilmington, DE 19801

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Rent TIC	5,625.00 1,075.00	5,625.00 1,075.00
<b>Total</b>			\$6,700.00

**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

Fy 2019

DEPARTMENT: CITY COUNCIL		DATE	July 17, 2019	
PAY TO: Lancaster Associates LLC		Batch	38351	
ADDITIONAL ADDRESS OR IDENTIFICATION		Vendor No	200410	
STREET: 2126 W. Newport Pike, Suite #200		Invoice No.	40111	
CITY: Wilmington STATE: DE ZIP: 1984		Invoice Date	7/10/2019	
FEDERAL ID#S:		Due Date	7/10/19	
DEPARTMENTAL ACTION REQUIRED		Separate Check <input checked="" type="checkbox"/> (Click on box for separate check)		
<input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation <input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes <input type="checkbox"/> Other		Acc'ts Audit	Date	
		Entered	26/19	
ACCOUNT DISTRIBUTION				
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT
23312300	55808	14TV2	0	\$6,700.00
				-
				-
				-
				-
				-
				-
TOTAL				\$ 6,700.00

RECORDED  
JULY 17, 2019  
CITY OF WILMINGTON  
FISCAL YEAR 2019

DESCRIPTION: April Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	JULY 17, 2019
REQUEST DATE: July 17th, 2019	APPROVED DATE
	

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

8/19

## Invoice

Date	Invoice #
5/1/2019	Rent

050619

Bill To
City of Wilmington, Louis L. Redding City/County Building 800 French St. 9th Floor Wilmington, DE 19801

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Rent TIC	5,625.00 1,075.00	5,625.00 1,075.00
<p>PO2000119</p> 			<b>Total</b> \$6,700.00

FY 2019

**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

DEPARTMENT: CITY COUNCIL		DATE	July 17, 2019	
PAY TO: Lancaster Associates LLC		Batch	3835	
ADDITIONAL ADDRESS OR IDENTIFICATION		Vendor No	200419	
STREET: 2126 W. Newport Pike, Suite #200		Invoice No.	<i>50114</i>	
CITY: Wilmington STATE: DE ZIP: 19804		Invoice Date	3/1/19	
FEDERAL I.D./SSN:		Due Date	7/18/2019	
DEPARTMENTAL ACTION REQUIRED				
<input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation		Acc'l's Audit	Date	
<input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes <input type="checkbox"/> Other		Entered	7/1/19	
ACCOUNT DISTRIBUTION				
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT
23312300	55608	14TV2	0	\$8,700.00
				
TOTAL		\$ 6,700.00		

**DESCRIPTION:** May Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	<i>OMB</i> 7/17/19
REQUEST DATE: July 17th, 2019	APPROVED DATE
<input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Not Approved</i>	
<input type="checkbox"/> <i>Accrued Payable</i> <i>Jul 17 2019</i> <i>LOGGED</i>	

Lancaster Associates LLC

2126 W. Newport Pike  
Suite #200  
Wilmington, DE 19804-3748

## Invoice

Date	Invoice #
6/1/2019	Rent

060119

**Bill To**  
**City of Wilmington**,  
**Louis L. Redding City/County Building**  
**800 French St. 9th Floor**  
**Wilmington, DE 19801**

P.O. No.	Terms	Project



**CITY OF WILMINGTON**  
**REQUEST FOR CHECK**

F12019

DEPARTMENT: CITY COUNCIL		DATE	July 17, 2019	
PAY TO: Lancaster Associates LLC		Batch <input type="text" value="3835"/> Vendor No <input type="text" value="200419"/> Invoice No. <input type="text" value="060114"/> Invoice Date: <input type="text" value="7/18/2019"/> Due Date <input type="text" value="7/18/2019"/> Separate Check <input checked="" type="checkbox"/> (Click on box for separate check)		
ADDITIONAL ADDRESS OR IDENTIFICATION				
STREET: 2126 W. Newport Pike, Suite #200				
CITY: Wilmington STATE: DE ZIP: 19804				
FEDERAL I.D./SS:				
DEPARTMENTAL ACTION REQUIRED				
<input type="checkbox"/> Insufficient Funds <input type="checkbox"/> Supporting Documentation		Acct's Audit <input type="text"/> Date <input type="text"/>		
<input type="checkbox"/> Signature Required <input type="checkbox"/> Account Codes		Entered <input type="text"/> Date <input type="text"/> 7/1/09		
<input type="checkbox"/> Other				
ACCOUNT DISTRIBUTION				
ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	AMOUNT
23312300	55608	14TV2	0	\$6,700.00
				
TOTAL				\$ 6,700.00

**DESCRIPTION:** June Rental Invoice

REQUESTED BY:	DEPARTMENT HEAD OR AUTHORIZED AGENT
Akira Grenardo	<i>OMS</i>
REQUEST DATE: July 17th, 2019	APPROVED DATE <i>2/11/19</i>
<div style="border: 1px solid blue; padding: 5px; display: inline-block;">           ACCOUNTS PAYABLE            JUL 17 2019            LOGGED         </div>	

ATTACHMENT E

BUDGET AND JUSTIFICATIONS

TO THE CITY COUNCIL:

	<u>City</u>	<u>Special</u>	<u>Total</u>
Personal Services	\$1,541,166	\$803,678	\$2,344,844
Materials, Supplies, and Equipment	536,922	273,387	810,309
Special Purpose	19,000	0	19,000
Debt Service	1,034	35,534	36,568
<b>Total</b>	<b>\$2,098,122</b>	<b>\$1,112,599</b>	<b>\$3,210,721</b>

TO THE CITY TREASURER:

	<u>City</u>	<u>Special</u>	<u>Total</u>
Personal Services	\$358,130	\$496,197	\$854,327
Materials, Supplies, and Equipment	105,096	4,701,021	4,806,117
<b>Total</b>	<b>\$463,226</b>	<b>\$5,197,218</b>	<b>\$5,660,444</b>

TO THE AUDITING DEPARTMENT:

	<u>City</u>	<u>Special</u>	<u>Total</u>
Personal Services	\$601,266	\$0	\$601,266
Materials, Supplies, and Equipment	213,969	0	213,969
<b>Total</b>	<b>\$815,235</b>	<b>\$0</b>	<b>\$815,235</b>

TO THE LAW DEPARTMENT:

	<u>City</u>	<u>Special</u>	<u>Total</u>
Personal Services	\$2,066,068	\$0	\$2,066,068
Materials, Supplies, and Equipment	583,790	0	\$583,790
<b>Total</b>	<b>\$2,649,858</b>	<b>\$0</b>	<b>\$2,649,858</b>

TO THE FINANCE DEPARTMENT:

	<u>City</u>	<u>Special</u>	<u>Total</u>
Personal Services	\$5,415,701	\$0	\$5,415,701
Materials, Supplies, and Equipment	4,114,983	0	\$4,114,983
Program and Activities	0	0	\$0
Debt Service	53,090	0	\$53,090
<b>Total</b>	<b>\$9,583,774</b>	<b>\$0</b>	<b>\$9,583,774</b>

Fund 233 - Cable TV

Dept./Div. 123 - City Council / Cable and Communications

		FY '20 Prop. Budget	FY '19 Org. Budget	Dollar Increase or (Decrease)	Percent Change
<b>233-123-51901 - Personal Services Adjustment</b>					
10 PROFESSIONAL DEVELOPMENT GROWTH FOR STAFF (in CTV20)	15,500	15,500	15,500	0	0 %
<b>Personal Services Adjustment Total</b>					
<b>233-123-52302 - Travel And Subsistence</b>					
10 TRAVEL FOR STAFF TO ATTEND VARIOUS CONFERENCES SUCH AS VIDEO PRODUCTION/EDITING/CUTTING EDGE EQUIPMENT/SOCIAL MEDIA (in CTV20)	5,000	5,000	5,000	0	0 %
<b>Travel And Subsistence Total</b>					
<b>233-123-52504 - Parking Fees</b>					
10 PARKING GATE CARDS / WPA - PARKING AT DOUBLETREE GARAGE (in CTV20)	12,600	13,400	13,400	0	0 %
20 PARKING FOR GUEST OF WITN FOR SHOWS (in CTV20)	800				
<b>Parking Fees Total</b>	13,400				
<b>233-123-52602 - Repairs To Equipment</b>					
10 THE LERRO CONTRACT - PER ORD #17-047 FOR MAINTENANCE OF WITN EQUIPMENT, THREE YEAR MAINTENANCE CONTRACT, JAN. 1, 2018 - DEC. 31, 2020. (in CTV20)	15,000				
20 MISC EQUIPMENT REPAIRS OUTSIDE THE SCOPE OF THE LERRO CONTRACT. (in CTV20)	5,000				
<b>Repairs To Equipment Total</b>	20,000	20,000	20,000	0	0 %
<b>233-123-52701 - Consultants</b>					
10 FUNDING FOR MAINTENANCE OF WITN AND CITY COUNCIL WEBSITES (in CTV20)	5,000				
20 COMCAST FRANCHISE FEE AUDIT (in CTV20)	18,000				
30 CONTRACTUAL SERVICE COST FOR LTPR CONTRACT FOR DIRECTOR OF COMMUNICATIONS. AS PART OF FY19 BUDGET DIR OF COMMUNICATIONS POSITION WAS ELIMINATED AND COST SHIFTED TO CONSULTANT ACCOUNT LINE. (in CTV20)	136,000				
<b>Consultants Total</b>	159,000	145,996	13,004	8.9 %	
<b>233-123-52901 - Subscriptions/Books</b>					
10 KILLER TRACKS ANNUAL SUBSCRIPTION FOR MUSIC/CD'S FOR WITN STATION (in CTV20)	5,000				
20 MUSIC FOR MESSAGE BOARD, DIGITAL JUICE, TRADE MAGAZINES, NEWS JOURNAL, ETC. (in CTV20)	1,000				
30 COMCAST SUBSCRIPTION FOR COMCAST BUSINESS LICENSE FOR WITN CHANNEL 22 (in CTV20)	2,388				
40 ADOBE CLOUD FOR 7 USERS / WITN (in CTV20)	5,879				
50 WEBSITE HOSTING FEE /ARRINET/ACCRISOFT (in CTV20)	2,820				
60 SOCIAL MEDIA PLATFORMS BOOSTING COST (in CTV20)	2,400				
<b>Subscriptions/Books Total</b>	19,487	16,607	2,880	17.3 %	
<b>233-123-52902 - Registrations Fees</b>					
10 CONFERENCES FOR PROFESSIONAL DEVELOPMENT - MERGING ISSUES WITH TV/VIDEO PRODUCTION/SOCIAL MEDIA / DPA (in CTV20)	5,000				
<b>Registrations Fees Total</b>	5,000	5,000	0	0 %	
<b>233-123-52905 - Memberships</b>					
10 VARIOUS MEMBERSHIPS - NAB, NPA, MCA, ETC. (in CTV20)	500				
<b>Memberships Total</b>	500	500	0	0 %	
<b>233-123-53124 - License Support Agreement</b>					
10 SWAGGIT - VIDEO STREAMING CONTRACT - ANNUAL CONTRACT PER ORD# 10-030 (in CTV20)	18,000				
<b>License Support Agreement Total</b>	18,000	18,000	0	0 %	
<b>233-123-53201 - Stationery And Supplies</b>					
10 OFFICE SUPPLIES FOR STAFF (in CTV20)	1,500				
20 GADGETS FOR PROMOTING WITN CH. 22 (in CTV20)	3,000				
<b>Stationery And Supplies Total</b>	4,500	4,500	0	0 %	
<b>233-123-53301 - Uniforms &amp; Related Equipment</b>					
10 WITN UNIFORMS (in CTV20)	3,500				
<b>Uniforms &amp; Related Equipment Total</b>	3,500	3,500	0	0 %	

## Fund 233 - Cable TV

## Dept./Div. 123 - City Council / Cable and Communications

		FY '20 Prop. Budget	FY '19 Org. Budget	Dollar Increase or (Decrease)	Percent Change
<b>233-123-53401 - Access &amp; Parts For Equipment</b>					
10 PRODUCTION COST FOR WITN/SOCIAL MEDIA - LIGHT, BULBS, BATTERIES, VARIOUS ACCESSORIES AS NEEDED (in CTV20)	4,500				
<b>Access &amp; Parts For Equipment Total</b>	<b>4,500</b>	<b>4,500</b>	<b>0</b>	<b>0</b>	<b>%</b>
<b>233-123-53403 - Food</b>					
10 DINNER/COUNCIL MEETINGS (in CTV20)	500				
<b>Food Total</b>	<b>500</b>	<b>500</b>	<b>0</b>	<b>0</b>	<b>%</b>
<b>233-123-53408 - Misc Supplies Or Parts</b>					
10 DVD/HEADPHONES/AUDIO EQUIPMENT/ MISC. EQUIPMENT NEEDED FOR WITN/SOICAL MEDIA (in CTV20)	14,500				
<b>Misc Supplies Or Parts Total</b>	<b>14,500</b>	<b>14,500</b>	<b>0</b>	<b>0</b>	<b>%</b>
<b>233-123-54101 - Furn, Fix, &amp; Office Equipment</b>					
10 MISC. FURNITURE (in CTV20)	500				
<b>Furn Fix &amp; Office Equipment Total</b>	<b>500</b>	<b>500</b>	<b>0</b>	<b>0</b>	<b>%</b>
<b>233-123-54102 - Other Noncapitalized Equipment</b>					
10 CAMERA/TRIPODS/MINIORS NEEDED FOR WITN OR FOR SOCIAL MEDIA/SOFTWARE (in CTV20)	5,000				
<b>Other Noncapitalized Equipment Total</b>	<b>5,000</b>	<b>5,000</b>	<b>0</b>	<b>0</b>	<b>%</b>
<b>233-123-55601 - Bond - Principal Payments</b>					
10 Existing principal payments per FY 2020 debt service schedule provided by Accounting Department. (GGH 2/11/2019) (in CTV20)	23,443				
<b>Bond - Principal Payments Total</b>	<b>23,443</b>	<b>16,351</b>	<b>7,092</b>	<b>43.4</b>	<b>%</b>
<b>233-123-55602 - Bond - Interest Payments</b>					
10 Existing interest payments per FY 2020 debt service schedule provided by Accounting Department. (GGH 2/11/2019) (in CTV20)	12,091				
<b>Bond - Interest Payments Total</b>	<b>12,091</b>	<b>12,679</b>	<b>(588)</b>	<b>(4.6)</b>	<b>%</b>
<b>233-123-5**** - Cable and Communications - Division Total</b>	<b>1,112,599</b>	<b>1,130,459</b>	<b>(17,861)</b>	<b>(1.6)</b>	<b>%</b>
<b>***-12*-5**** - City Council - Department Total</b>	<b>1,112,599</b>	<b>1,130,459</b>	<b>(17,861)</b>	<b>(1.6)</b>	<b>%</b>
<b>233-123-5**** - Cable TV - All Departments Total</b>	<b>1,112,599</b>	<b>1,130,459</b>	<b>(17,861)</b>	<b>(1.6)</b>	<b>%</b>

# **EXHIBIT L**

# City of Wilmington



**MICHAEL S. PURZYCKI**  
Mayor

**Auditing Department**

August 16, 2019

***VIA ELECTRONIC MAIL***

Velda Jones-Potter, City Treasurer  
Office of the City Treasurer  
Louis L. Redding City/County Building  
800 N. French Street, 5th Floor  
Wilmington, DE 19801  
E-Mail: [vjpotter@wilmingtonde.gov](mailto:vjpotter@wilmingtonde.gov)

**RE: Order of the Treasurer 2019-2 dated August 14, 2019**

Dear Treasurer:

As you know, the Auditing Department is charged with providing essential accountability and transparency over municipal government programs and operations. Work performed by the Auditing Department provides independent and objective analysis and information so that municipal functions and services are provided to the public effectively, efficiently, economically, and ethically. In furtherance of that charge, the Auditing Department, with the input of the Audit Review Committee, creates an annual audit plan and schedule for the auditing activities of the departments, offices, boards, and commissions of the City of Wilmington consistent with the priorities and resources of the department. While the Auditing Department is empowered to perform special or spontaneous audits and reviews outside of its annual audit plan and schedule, its resources are finite and, as a result, independent judgment and discretion consistent with applicable professional standards are required in the exercise of the department's authority to perform such engagements. Additionally, in exercising its professional judgment and discretion, the Auditing Department is mindful of and exercises greater care when the subject matter or scope of an engagement will unduly burden or disrupt municipal operations (e.g., causing a delay of payments to municipal vendors for an extended period).

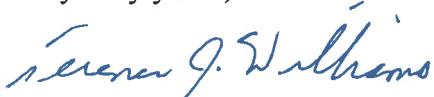
With this background in mind, I received and reviewed the Order of the Treasurer 2019-2 dated August 14, 2019 ("Order 2019-2") along with its supporting analysis. Under the authority granted in Art. VI, Ch. 3 of the City Charter and Ch. 2, Art. VII of the City Code, and based on the exercise of my own independent judgment and discretion, the Auditing Department is declining your request for an engagement related to the subject matter of Order 2019-2. The Auditing Department, of course, retains its authority to audit, examine, or otherwise review the matter in the future. To the extent that the basis for the extended custody provisions contained within Order

City Treasurer  
August 16, 2019  
Page 2

2019-2 rely on, are contingent upon, or remain in place pending the Auditing Department's exercise of its legal authority or independent judgment and discretion (as described above), it has done so, and the result of such exercise should not form the basis for the Office of the City Treasurer's continued withholding of payments related to the subject matter of Order 2019-2.

In addition, as communicated to you previously, and in an effort to avoid disruptions to municipal operations, it is advisable for your office to share your concerns directly with representatives of the appropriate offices or departments and allow them an opportunity to address your concerns, prior to taking action of the sort provided in Order 2019-2.

Very truly yours,



Terence J. Williams  
City Auditor  
City of Wilmington - Auditing Department  
800 N. French St.  
Wilmington, DE 19801  
Office: (302) 576-2165  
Fax: (302) 573-5644

[tjwilliams@wilmingtonnde.gov](mailto:tjwilliams@wilmingtonnde.gov)

pc:

Michael S. Purzycki, Mayor (via e-mail)  
Hanifa G. N. Shabazz, City Council President (via e-mail)  
Robert M. Goff, City Solicitor (via e-mail)  
J. Brett Taylor, Director of Finance (via e-mail)

# **EXHIBIT M**

**From:** Hanifa G. N. Shabazz  
**Sent:** Tuesday, August 20, 2019 2:54 PM  
**To:** Velda Jones-Potter  
**Cc:** Marchelle Basnight  
**Subject:** Order of the Treasurer 2019-2

Dear City Treasurer:

I am reaching out regarding Order of the Treasurer 2019-2 dated August 14, 2019. In your order it is stated that the Order "shall terminate with the Treasury's receipt of the approving opinion from the City's Internal Auditor; or, corrective action, to the satisfaction of Treasury, taken by the appropriate officers of the City, whichever occurs first."

Per the correspondence that was sent to you from the City Auditor on August 16, 2019 providing an opinion on this matter, the terms to satisfy and terminate this order have been met.

In order to ensure that there are no further disruptions to City operations, I am reaching out directly to ask you to please provide me with the date your office will mail the vendor payments.

If in the future you are planning make an action that affects City Council's ability to fulfill our responsibilities please let me know as a courtesy. It reflects negatively not only on the Council, but on the City when we are not able to display a cohesive internal communications process.

Thank you

Hanifa Shabazz, DHL  
President City Council  
Wilmington City Council  
(302) 576 2140