

RES 17-064

Wilmington, Delaware  
September 21, 2017

#4409

Sponsor:

Council  
Member  
Oliver

Co-Sponsor:

Council  
Member  
Walsh

**WHEREAS**, pursuant to Wilm. C. (Charter) §1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

**WHEREAS**, Wilm. C. §2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

**WHEREAS**, Wilm. C. §2-621(c) provides, that governmental agencies, governmental authorities organized pursuant to Title 22 of the Delaware Code and non-profit organizations are exempt from the City's bid procedures and that upon the declaration of a property as approved for disposition, by resolution of City Council, the Department of Real Estate and Housing may negotiate an agreement of sale, lease, exchange, or other transfer of such property owned by the City to any such governmental agency, governmental authority or non-profit organization; and

**WHEREAS**, the City currently owns real property located at 301 East 15<sup>th</sup> Street a.k.a. 1500 North Walnut Street, Wilmington, Delaware, being New Castle County Tax Parcel ID No. 26-029.30-126 (the "Property"); and

**WHEREAS**, the City of Wilmington Office of the Mayor, on behalf of the Department of Real Estate and Housing, and/or their respective designees, (the "City") is seeking a long-term use for the Property; and

**WHEREAS**, Urban Bike Project of Wilmington, Inc. ("Urban Bike") is a non-profit organization based in Wilmington with a focus on education and mechanical self-reliance and seeks to serve the community's needs by educating and promoting cycling as a safe,

practical, cost-efficient mode of transportation; and

**WHEREAS**, Urban Bike seeks to use the Building on the Property (“Shop”) as a mechanic shop and will have a full complement of shop quality tools and educational and mechanical programs to assist City of Wilmington residents and youth in need; and

**WHEREAS**, Cityfest, Inc. (“Cityfest”) is a non-profit organization based in Wilmington that solicits sponsorships and grants that subsidize the City of Wilmington's financial and staffing contributions to arts and cultural programs;

**WHEREAS**, Cityfest wishes to use the grounds and stables on the Property (“Demised Premises”) to provide a stimulating environment for collaborative creative endeavors between community residents and artists of various arts genres and mediums, to develop and present works of art that are multidisciplinary in nature, as well as programming that will include community-driven children's and teen arts initiatives, artist-lead workshops, and arts-focused public discussions;

**WHEREAS**, the City has agreements with both Cityfest and Urban Bike, for fifteen (15) year leases of the Property, with the option to extend for a second fifteen (15) year term; and

**WHEREAS**, the lease agreements with Cityfest and Urban Bike are anticipated to commence January 1, 2018 and are subject to an Access Agreement between the parties that will govern mutual access and security measures; and

**WHEREAS**, the lease agreements with Cityfest and Urban Bike Project are subject to fundraising requirements to renovate the Shop and Demised Premises; and

**WHEREAS**, Urban Bike’s lease is subject to a sublease requirement, wherein Urban Bike will sublet the second floor of the Shop or a portion thereof to Cityfest at a time to be

determined.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the City of Wilmington Office of the Mayor is hereby authorized and directed to enter into two lease agreements for the property located at 301 East 15<sup>th</sup> Street a.k.a. 1500 North Walnut Street (as depicted in Exhibit "B") for a fifteen (15) year term, with the option to extend for a second fifteen (15) year term, each at a rate of \$1.00 per year, as evidenced in Exhibit "A" attached hereto, and the Chief of Staff is hereby authorized and directed to execute as many copies of said lease agreements as may be necessary.

Passed by City Council,  
September 21, 2017

ATTEST: Maribel Seijo  
City Clerk

Approved as to form this 19<sup>th</sup>  
day of September, 2017

[Signature]  
Assistant City Solicitor

**SYNOPSIS:** This Resolution authorizes the Wilmington Office of the Mayor, on behalf of Department of Real Estate and Housing, to enter into two concurrent lease agreements for the property located at 301 East 15<sup>th</sup> Street a.k.a. 1500 North Walnut Street, with Cityfest, Inc. and Urban Bike Project of Wilmington, Inc. The leases have a term of 15 years with an option to extend another 15 years.

Exhibit A

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (the “Lease”) is made this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the **City of Wilmington**, a municipal corporation of the State of Delaware (hereinafter referred to as “City”) and **Cityfest, Inc.**, a non-profit corporation incorporated under the laws of the State of Delaware (hereinafter referred to as “Cityfest”).

**WITNESSETH:**

**WHEREAS**, the City owns that certain parcel of land located at 301 E. 15<sup>th</sup> Street, Wilmington, Delaware, being Tax Parcel No. 26-029.30-126 (hereinafter referred to as the “Property”), which Property is bounded by E. 16<sup>th</sup> Street to the north, Clifford Brown Walk to the east, E. 15<sup>th</sup> Street to the south, and N. Walnut Street to the west and is the former home of the mounted patrol unit of the Wilmington Police Department; and

**WHEREAS**, the Property consists of (i) abandoned horse stables (the “Stables”) located on the northwest corner of the Property, (ii) a large structure located on the southwest corner of the Property known as the “Shop”, which the City intends to lease to the Urban Bike Project of Wilmington, Inc. (the “Shop”) and (iii) certain unimproved grounds that are not otherwise included as part of the Stables or Shop (the “Grounds”); and

**WHEREAS**, Cityfest desires to lease the Stables and Grounds, which are more particularly depicted on Exhibit A attached hereto (hereafter referred to as the “Demised Premises”), for the purpose of operating a multidisciplinary arts incubator that will facilitate the creation, cultivation, exhibition and performance of new works of art; and

**WHEREAS**, the City desires to enter into such a lease for the Demised Premises with Cityfest; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the parties hereto agree as follows:

(1) Lease Term. The City hereby agrees to lease the Demised Premises to Cityfest for a term of fifteen (15) years beginning on January 1, 2018 and ending on December 31, 2032, if not sooner terminated or extended in accordance with the terms of this Lease.

(2) Extension. Subject to the terms and conditions contained in this Lease, Cityfest shall have the option to extend the term of this Lease for an additional fifteen (15) years, so long as, at the time that Cityfest exercises this option, it is in compliance with the terms and conditions set forth in this Lease. Cityfest shall provide the City with notice of its intent to exercise this extension option by giving written notice to the City Council and the Office of the Mayor at least three (3) months prior to the expiration of the initial term of this Lease. Following the exercise of the extension option provided in this Section (2), this Lease shall terminate on December 31, 2047, if not sooner terminated in accordance with the terms of this Lease.

(3) Rent. Cityfest shall pay the City a base rent in the amount of \$1.00 per year during the term of this Lease. Cityfest agrees to pay the sum of \$15.00 to the City within five (5) business days following the execution and delivery of this Lease as a prepayment of all base rent due during the initial term of this Lease, and as part of the notice delivered by Cityfest to the City in order to exercise the fifteen (15) year extension option described in Section (2) above, Cityfest shall include an additional payment of \$15.00, which amount shall be a prepayment of all base rent due during the extension term of this Lease. In the event that this Lease is terminated prior to the expiration of the term, the City may retain all of the prepaid base rent and shall not be obligated to refund any portion thereof to Cityfest.

(4) Use of the Demised Premises; Signage; Renovation of the Demised Premises.

- a. Subject to the rights of Urban Bike Project of Wilmington, Inc. (the "Urban Bike Project") described in Section (5) below, Cityfest shall use the Demised Premises solely for the operation of a multidisciplinary arts incubator, which will facilitate the creation, cultivation, exhibition and performance of new works of art. The use of the Demised Premises shall be consistent with the zoning classification for the Property and all applicable laws, as well as the provisions of the certificate of incorporation, bylaws and strategic plan for Cityfest.
- b. Cityfest must obtain the City's written approval prior to (i) performing any invasive environmental testing on the Property (except that the environmental site assessment required pursuant to Section (8) shall not require the City's written approval) or (ii) conducting or performing environmental remediation on the Property (except that any environmental remediation required pursuant to Section (8) shall not require the City's written approval). Cityfest shall provide the City with copies of any correspondence received by Cityfest from, or sent by Cityfest to, other governmental agencies or entities with respect to the Property.
- c. Should Cityfest wish to install exterior sign(s) on the Demised Premises, Cityfest shall submit renderings of such proposed exterior sign(s) to the City and shall obtain the City's prior written approval. All exterior sign(s) installed by Cityfest shall comply with the Wilmington City Code, and Cityfest shall obtain all necessary governmental permits and approvals prior to the installation of any exterior sign. Cityfest agrees that it shall coordinate the placement and content of any exterior signs with the Urban Bike Project. All exterior signs erected during the term of this Lease must be removed from the Property prior to the expiration of the Lease.
- d. Cityfest intends to renovate the Demised Premises in two separate phases. In the first phase, Cityfest shall improve exterior grounds excluding the Stables. The first phase of the renovation project shall be commenced by September, 2018 and completed by September, 2019. The second phase of the renovation project shall consist of renovation of the Stables. The second phase of the renovation project shall be commenced by January,

2020 and completed by January, 2021. Cityfest shall submit to the City, for the City's review and approval, detailed plans and drawings for any renovation, alteration or improvement of the Demised Premises. Cityfest shall obtain all necessary governmental permits and approvals prior to commencing any renovation, alteration or improvement of the Demised Premises and shall pay prevailing wages to all contractors and subcontractors working on the renovation of the Demised Premises.

- e. Cityfest shall raise a minimum of \$250,000 for the completion of the renovations to the Demised Premises. Should Cityfest fail to raise the sum of \$250,000 on or prior to April 16, 2020 (the "Fundraising Goal") for the purpose of completing the renovations of the Demised Premises, the City and Cityfest shall meet to discuss the status of Cityfest's fund raising efforts and whether the planned renovations for the Demised Premises need to be revised. In the event that the City and Cityfest are unable to reach an agreement on a revised renovation plan for the Demised Premises and/or a revised Fundraising Goal by April 16, 2021, then the City shall have the right to unilaterally revise the terms of this Lease; provided however, the City shall not have the right to cause the Lease term to terminate prior to April 16, 2022 in the absence of a default by Cityfest (other than failing to meet the Fundraising Goal), and Cityfest shall have the right to terminate this Lease in the event that any of the City's revised lease terms are unacceptable to Cityfest in its sole discretion.
- f. Cityfest shall use good faith efforts to maximize participation by disadvantaged business enterprises ("DBE") with respect to the renovations planned for the Demised Premises. Contractors and subcontractors working on such renovation shall be required to use good faith efforts to achieve a goal of at least twenty percent (20%) participation with respect to such renovations. All DBE's associated with such renovations must be certified, or be capable of being certified, as DBE's by the City's Office of Economic Development. Cityfest shall cause its contractors and subcontractors to utilize the City's DBE portal prior to the distribution of any bid packages related to the renovations in order to incorporate potential DBEs into the bid package mailing list. In conjunction with the distribution of any bid package for the renovations, Cityfest shall cause its contractors and subcontractors to include potential DBEs on the bid package mailing list and shall provide the City's Office of Economic Development with a copy of the bid package and mailing list in conjunction with the distribution of such bid package. Within ten (10) days following the awarding of any bid for the renovations, Cityfest shall deliver a brief report to the Office of Economic Development that contains a discussion of the basis for the selection of the winning bid and the reasons for rejecting any DBE candidates that submitted a bid in response to the bid package.

(5) Urban Bike Project Access Agreement and Sublease. The parties acknowledge that the City intends to lease the Shop to the Urban Bike Project (the lease between the City and the Urban Bike Project being hereinafter referred to as the "Urban Bike Project Lease"). In order to promote the joint use of the Property by Urban Bike Project and Cityfest, the City is requiring Cityfest and Urban Bike Project to enter into an Access Agreement (the "Access Agreement"), which Access Agreement shall be in the form attached hereto as Exhibit B. The Access Agreement shall govern the respective use of the Property by Urban Bike Project and Cityfest and allocate responsibilities between those parties with respect to the Property. In particular, the Access Agreement shall provide (i) Cityfest with access to at least one bathroom in the Shop, (ii) Urban Bike Project with access to the Grounds, (iii) security measures that Urban Bike Project and Cityfest must undertake to protect the safety of individuals and personal property and fixtures within the Shop, Grounds and Stables, (iv) a reimbursement mechanism whereby a party that suffers damage as a result of the other party's breach of the Access Agreement shall be made whole by the breaching party and (v) Cityfest with the right to sublease all or a portion of the second floor of the Shop on the terms listed on Schedule 1 attached hereto (the "Cityfest Sublease").

(6) Right of First Option. Cityfest shall have a right of first option to lease the Shop if the Urban Bike Project Lease terminates or expires. The City shall provide notice to Cityfest upon the termination or expiration of the Urban Bike Project Lease, in which event, Cityfest may elect to incorporate the Shop into the leased premises under this Lease. If Cityfest chooses to incorporate the Shop into this Lease, it must notify the City within sixty (60) days of receiving such notice that it wishes to amend this Lease to include the entire Property. Upon receipt of such notice, the City and Cityfest shall enter into an amendment to this Lease that shall amend the lease area covered by this Lease to include the entire Property. If Cityfest declines to exercise this right or fails to provide the required notice that it intends to exercise this right within the sixty (60) day period, then Cityfest shall have no further rights or options with respect to the Shop.

(7) Condition of the Property and Demised Area. Cityfest shall inspect the Property (including the Demised Premises) prior to the commencement of the initial term of the Lease to familiarize itself with the condition of the Property and the Demised Premises. Cityfest acknowledges that the Demised Premises is being leased in its "as is" condition and without any warranty or representation as to the condition of the Property (including the Demised Premises) or Cityfest's ability to use the Demised Premises for the intended purposes. The City shall bear no responsibility for the condition of the Property (including the Demised Premises), including but not limited to, any environmental conditions that may exist on the Property or within the Demised Premises.

(8) Environmental. Cityfest shall obtain a Phase I environmental site assessment prior to causing any disturbance of soil on the Grounds, as well as a Phase II environmental site assessment if necessary, based upon the results of the Phase I environmental site assessment. Following the results of the site assessment(s), Cityfest will take all appropriate action as required under the Hazardous Sites Cleanup Act, 7 Del. C. Chapter 91 et seq., as the same may from time to time be amended, and the regulations promulgated pursuant thereto ("HSCA") to contain, remove, remedy, clean up, or abate any contamination at the site prior to redeveloping the Demised Premises.

Cityfest will not use the Property at any time in such a manner as to cause a violation under any environmental law, rule, regulation, statute, ordinance, order or decree of any state, federal, municipal or other governmental body or agency having jurisdiction over the Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as the same may from time to time be amended, and the regulations promulgated pursuant thereto (“CERCLA”) or HSCA.

Cityfest further agrees, in addition to the foregoing and not in limitation thereof, to indemnify, defend, and hold harmless the City from and against any and all claims, demands, liabilities, costs, expenses, penalties, fines, liens, damages and losses, including without limitation, reasonable attorneys’ fees, as incurred (payable quarterly upon written demand) resulting from or related to any environmental condition or any violation of any environmental law in connection with Cityfest’s use or occupancy of the Property including, but not limited to, any claim for personal injury, death, or property damages arising from any such environmental condition or violation of any environmental law asserted by third parties against the City, any liabilities sustained or incurred by the City for the containment, removal, remedy, cleanup or abatement of any contamination arising from any environmental condition or any violation of any environmental law.

(9) Maintenance/Improvements.

- a. Cityfest, at its sole cost and expense, shall be responsible for all maintenance, repairs and replacements with respect to the Demised Premises, including all capital items. Cityfest shall maintain the Demised Premises and all related improvements in a good and safe condition and in compliance with all applicable laws. The City shall have no maintenance, repair or replacement obligations with respect to the Demised Premises and any related improvements. Any alterations or improvements to be made to the Demised Premises shall be made at Cityfest's sole cost and expense after review and approval by the City of the applicable plans and specifications. All maintenance, repairs, replacements, improvements or alterations done at the Demised Premises shall be performed in a good and workmanlike manner.
- b. Cityfest shall take all actions reasonably recommended by the City to avoid harming or removing any trees on the Property. Cityfest shall not remove any tree without obtaining the prior written consent of the City’s Urban Forest Administrator. To the extent that Cityfest must remove any trees, Cityfest, at its sole cost and expense, shall provide at least two (2) replacement trees in accordance with Wilm. C. (Code) § 46-32.
- c. During the term, Cityfest shall cause the sidewalks adjacent to the Property to be maintained in a good and safe condition, free and clear of snow, ice, grass, debris and trash.

(10) Taxes; Utilities.



- a. During the term of this Lease, Cityfest shall be liable, on a joint and several basis with Urban Bike Project, for the payment of any real estate taxes that may be assessed, levied, or imposed upon the Property or any part thereof, or the use or occupancy thereof.
- b. During the term of this Lease, Cityfest shall be liable, on a joint and several basis with Urban Bike Project, for the payment of any and all water, sewer, stormwater, gas, electricity, heating fuel, telephone, cable, internet and trash service fees and charges incurred by or charged against all or any portion of the Property (collectively, "Utility Charges"), except that Cityfest shall not be responsible for any Utility Charges that relate to utility services used exclusively by Urban Bike Project that are billed directly to Urban Bike Project and for which Urban Bike Project has acknowledged in writing to the City that it shall be solely responsible.
- c. Cityfest shall be solely responsible for the cost of providing water service to the Stables, including, but not limited to, the cost of extending or installing a water line to provide water service. Cityfest shall be responsible for the disposal of its own trash, and shall secure a dumpster for such purpose.
- d. Nothing in this Lease shall preclude the Urban Bike Project and Cityfest from allocating responsibility for the payment of real estate taxes and Utility Charges amongst themselves in a fair and equitable manner.

(11) Insurance. During the term of this Lease, Cityfest shall keep and maintain in full force and effect, at its sole cost and expense:

- a. Commercial general liability insurance against any claims for bodily injury, death or property damage, occurring on, in or about the Property, and against contractual liability for any such claims, with a combined single limit of \$1,000,000;
- b. Workers compensation insurance as required by applicable law, and, during all periods of construction at the Demised Premises, commercially reasonable builder's risk insurance; and
- c. Other insurance as may be deemed prudent by Cityfest, including but not limited to, fire and casualty insurance on the Stables.

All policies of insurance required by this Lease shall be maintained with insurance underwriters authorized to do business in the State of Delaware. During the term of this Lease, Cityfest shall not permit or cause the cancellation or reduction of coverage of any insurance required hereunder without the City's approval. Cityfest shall further name the City as an additional insured under the insurance required by this Lease.

(12) Indemnification. Cityfest covenants and agrees to indemnify, defend and hold harmless the City, its officers, agents and employees, against any suit or claim of any kind for

damages or injury to persons or property sustained on the Property during the term of this Lease or arising from the use of the Property during the term of this Lease, including environmental claims attributable to Cityfest's use of the Demised Premises, but excluding any claim arising out of or resulting from the City's grossly negligent and/or intentionally unlawful conduct.

(13) Fire or Other Casualty.

- a. In the event that the Demised Premises is rendered wholly unfit, by fire or other casualty, for the uses and purposes of Cityfest hereunder, then this Lease shall terminate on the date of such fire or casualty.
- b. In the event that the Demised Premises is rendered partially unfit, by fire or other casualty, then Cityfest shall have one hundred twenty (120) days following such fire or casualty to determine whether, in the judgment of Cityfest, the Demised Premises can be repaired with reasonable promptness so as to be fit for Cityfest's use and purposes. If Cityfest notifies the City within the one hundred twenty (120) day period of its election to pursue the repair of the Demised Premises, then this Lease shall continue as set forth herein, and Cityfest, at its sole cost and expense, shall make the necessary repairs to the Demised Premises in a timely, good and workmanlike manner without unreasonable delay. If Cityfest fails to notify the City of its decision within the one hundred twenty (120) day period or declines to pursue the repair of the Demised Premises, then this Lease shall automatically terminate upon the conclusion of the one hundred twenty day (120) period and Cityfest shall surrender possession of the Demised Premises to the City.

(14) Mechanic's Liens. Cityfest agrees to immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialman's or other lien against the Demised Premises or Property which may arise out of any payment due for or purported to be due for any labor, services, materials, supplies or equipment alleged to have been furnished to or for Cityfest in, on, or about the Demised Premises or Property.

(15) Assignment/Sublease. Cityfest shall not assign this Lease or sublet the Demised Premises or otherwise transfer the rights and obligations under this Lease without the prior written consent of the City. Any assignment, sublease, or other transfer in violation of this provision shall result in termination of this Lease.

(16) Compliance with Laws. Cityfest shall operate and maintain the Demised Premises in accordance with all applicable federal, state, and local laws, rules and regulations.

(17) Termination.

- a. This Lease shall terminate automatically at the expiration of the initial term, unless said initial term is extended as provided herein.

- b. In the event that Cityfest breaches any term or condition of this Lease and, after written notice of such default by the City, fails to cure such default within sixty (60) days after receipt of such notice, or such default is of such a character as to require more than sixty (60) days to cure and Cityfest fails to commence to cure such default through the exercise of reasonable diligence within that sixty (60) day period, the City may terminate this Lease immediately by giving Cityfest written notice of the termination and the reasons therefor.
- c. The City may terminate this Lease in the event that Cityfest fails to meet the fundraising goal set forth in Section (4)e. above.
- d. The parties may terminate this Lease upon mutual consent.
- e. Upon the termination or expiration of this Lease, Cityfest shall promptly remove all of its personal property and effects from the Demised Premises, except fixtures which have become part of the realty, and peacefully yield up the Demised Premises to the City.
- f. Upon termination of this Lease, all improvements to the Demised Premises that are not otherwise removed by Cityfest shall become the property of the City.
- g. Cityfest shall be liable to the City for any damage to the Demised Premises, normal wear and tear excepted.

(18) Estoppel. Cityfest shall, from time to time, upon the written request of the City, execute and deliver to the City a reasonable form of estoppel, as prepared and requested by the City, within ten (10) days of such a request.

(19) City Council Approval. This Lease shall not be effective, and neither party shall have any rights or obligations hereunder, unless and until this Lease is approved by resolution of the City Council of the City of Wilmington.

(20) Notice. Any notice required hereunder to be given to Cityfest shall be sufficient if in writing and sent by certified mail, overnight courier service or hand delivery to Cityfest at 800 N. French Street, 9<sup>th</sup> Floor, Wilmington DE 19801. Any notices required hereunder to be given to the City shall be sufficient if in writing and sent by certified mail, overnight courier service or hand delivery to City of Wilmington Law Department, Louis L. Redding City/County Building, 9<sup>th</sup> Floor, 800 N. French Street, Wilmington, Delaware 19801.

(21) Binding Effect. Without limiting Section (15) above, this Lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns. This Lease constitutes the entire agreement between the parties hereto and shall not be changed, amended or otherwise modified except by a writing signed by Cityfest and the City.

(22) Access to Property. The City shall have the right to inspect the Property at any time. Further, the City hereby reserves the right to impose easements on, under and across any portion of the Property for existing and future utilities.

(23) Wage Tax. Cityfest shall be responsible, if applicable, for the payment of City wage taxes for its employees in accordance with the City of Wilmington's Wage Tax Law as it may be amended from time to time. Cityfest shall provide the City with a list of all contractors and subcontractors working on the renovations described in Section (4)d. of this Lease and copies of their respective City of Wilmington business licenses and wage tax account numbers. On a quarterly basis, Cityfest shall provide the City with a reporting sheet that describes the total amount paid to each respective contractor and subcontractor for labor during the previous calendar quarter and in the aggregate for their work on such renovations. The City shall also have the right to review and audit the payroll records of Cityfest.

(24) Governing Law. This Lease shall be governed by the laws of the State of Delaware.

(25) Severability. In the event that a portion of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall not be affected thereby, but shall remain in full force and effect.

[signature page follows]

IN WITNESS WHEREOF, the parties have entered into this Lease the date and year first above mentioned.

**CITY OF WILMINGTON**

**CITYFEST, INC.**

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
City Clerk

Attest: \_\_\_\_\_  
Secretary

Approved as to form

\_\_\_\_\_  
Assistant City Solicitor

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease") is made this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the **City of Wilmington**, a municipal corporation of the State of Delaware (hereinafter referred to as "City"), and **Urban Bike Project of Wilmington, Inc.**, a non-profit corporation incorporated under the laws of the State of Delaware (hereinafter referred to as "Urban Bike Project").

### **WITNESSETH:**

**WHEREAS**, the City owns that certain parcel of land located at 301 E. 15<sup>th</sup> Street, Wilmington, Delaware, being Tax Parcel No. 26-029.30-126 (hereinafter referred to as the "Property"), which Property is bounded by E. 16<sup>th</sup> Street to the north, Clifford Brown Walk to the east, E. 15<sup>th</sup> Street to the south, and N. Walnut Street to the west and is the former home of the mounted patrol unit of the Wilmington Police Department;

**WHEREAS**, Urban Bike Project has leased the Property since November 20, 2013, with the current lease agreement to expire on April 15, 2018, and has used the Property to provide health, transportation and youth services to over one thousand Wilmington residents annually since occupying the Property;

**WHEREAS**, Urban Bike Project desires to lease the building located in the southwest corner of the Property, which building is the largest structure on the Property and is more particularly depicted on Exhibit A attached hereto (hereafter referred to as the "Shop"), for the operation of a bike maintenance, repair and retail space, for providing educational assistance to residents of the City of Wilmington and for hosting fundraising and community events; and

**WHEREAS**, the City desires to enter into such a lease for the Shop with the Urban Bike Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the parties hereto agree as follows:

(1) Lease Term. The City hereby agrees to lease the Shop to the Urban Bike Project for a term of fifteen (15) years beginning on January 1, 2018 and ending on December 31, 2032, if not sooner terminated or extended in accordance with the terms of this Lease.

(2) Extension. Subject to the terms and conditions contained in this Lease, Urban Bike Project shall have the option to extend the term of this Lease for an additional fifteen (15) years, so long as, at the time that Urban Bike Project exercises this option, it is in compliance with the terms and conditions set forth in this Lease. Urban Bike Project shall provide the City with notice of its intent to exercise this extension option by giving written notice to the City Council and the Office of the Mayor at least three (3) months prior to the expiration of the initial term of this Lease. Following the exercise of the extension option provided in this Section (2), this Lease shall terminate on December 31, 2047, if not sooner terminated in accordance with the terms of this Lease.

(3) Rent. Urban Bike Project shall pay the City a base rent in the amount of \$1.00 per year during the term of this Lease. Urban Bike Project agrees to pay the sum of \$15.00 to the City within five (5) business days following the execution and delivery of this Lease as a prepayment of all base rent due during the initial term of this Lease, and as part of the notice delivered by Urban Bike Project to the City in order to exercise the fifteen (15) year extension option described in Section (2) above, Urban Bike Project shall include an additional payment of \$15.00, which amount shall be a prepayment of all base rent due during the extension term of this Lease. In the event that this Lease is terminated prior to the expiration of the term, the City may retain all of the prepaid base rent and shall not be obligated to refund any portion thereof to the Urban Bike Project.

(4) Use of the Shop; Signage; Renovation of the Shop.

- a. Subject to the rights of Cityfest, Inc. (“Cityfest”) described in Section (5) below, Urban Bike Project shall use the Shop solely for the operation of a bike maintenance, repair and retail space, for providing educational assistance to residents of the City of Wilmington and for hosting fundraising and community events. The use of the Shop shall be consistent with the zoning classification for the Property and all applicable laws, as well as the provisions of the certificate of incorporation, bylaws and strategic plan for Urban Bike Project.
- b. Urban Bike Project must obtain the City’s written approval prior to (i) performing any invasive environmental testing on the Property or within the Building or (ii) conducting or performing environmental remediation on the Property or within the Building. Urban Bike Project shall provide the City with copies of any correspondence received by the Urban Bike Project from, or sent by the Urban Bike Project to, other governmental agencies or entities with respect to the Property and relating to environmental testing or remediation.
- c. Should Urban Bike Project wish to install exterior sign(s) on the Shop, Urban Bike Project shall submit renderings of such proposed exterior sign(s) to the City and shall obtain the City’s prior written approval. All exterior sign(s) installed by the Urban Bike Project shall comply with the Wilmington City Code, and Urban Bike Project shall obtain all necessary governmental permits and approvals prior to the installation of any exterior sign. Urban Bike Project agrees that it shall coordinate the placement and content of any exterior signs with Cityfest. All exterior signs erected during the term of this Lease must be removed from the Property prior to the expiration of the Lease.
- d. Urban Bike Project intends to renovate the Shop in two separate phases. In the first phase, Urban Bike Project intends to improve the exterior façade of the Shop, stabilize the Shop’s structure and rehabilitate the first floor of the Shop in order to accommodate Urban Bike Project’s operations and provide space for community events, meetings and programs. The first

phase of the renovation project shall be commenced by April 16, 2020 and completed by April 16, 2022. The second phase of the renovation project shall consist of renovating the second floor of the Shop, so that it may be used in a manner permitted by this Lease. Urban Bike Project shall submit to the City, for the City's review and approval, detailed plans and drawings for any renovation, alteration or improvement of the Shop. Urban Bike Project shall obtain all necessary governmental permits and approvals prior to commencing any renovation, alteration or improvement of the Shop and shall pay prevailing wage rates established by the State of Delaware's Department of Labor to all contractors and subcontractors working on the renovation of the Shop.

- e. Urban Bike Project shall raise a minimum of \$250,000 for the completion of the renovations to the Shop. Should Urban Bike Project fail to raise the sum of \$250,000 on or prior to April 16, 2020 (the "Fundraising Goal") for the purpose of completing the renovations of the Shop, the City and Urban Bike Project shall meet to discuss the status of Urban Bike Project's fund raising efforts and whether the planned renovations for the Shop need to be revised. In the event that the City and Urban Bike Project are unable to reach an agreement on a revised renovation plan for the Shop and/or a revised Fundraising Goal by April 16, 2021, then the City shall have the right to unilaterally revise the terms of this Lease; provided however, the City shall not have the right to cause the Lease term to terminate prior to April 16, 2022 in the absence of a default by Urban Bike Project (other than failing to meet the Fundraising Goal), and Urban Bike Project shall have the right to terminate this Lease in the event that any of the City's revised lease terms are unacceptable to Urban Bike Project in its sole discretion.
- f. Urban Bike Project shall use good faith efforts to maximize participation by disadvantaged business enterprises ("DBE") with respect to the renovations planned for the Shop. Contractors and subcontractors working on such renovation shall be required to use good faith efforts to achieve a goal of at least twenty percent (20%) participation with respect to such renovations. All DBE's associated with such renovations must be certified, or be capable of being certified, as DBE's by the City's Office of Economic Development. Urban Bike Project shall cause its contractors and subcontractors to utilize the City's DBE portal prior to the distribution of any bid packages related to the renovations in order to incorporate potential DBEs into the bid package mailing list. In conjunction with the distribution of any bid package for the renovations, Urban Bike Project shall cause its contractors and subcontractors to include potential DBEs on the bid package mailing list and shall provide the City's Office of Economic Development with a copy of the bid package and mailing list in conjunction with the distribution of such bid package. Within ten (10) days following the awarding of any bid for the renovations, Urban Bike Project shall deliver a brief report to the Office of Economic Development that



contains a discussion of the basis for the selection of the winning bid and the reasons for rejecting any DBE candidates that submitted a bid in response to the bid package.

(5) Cityfest Joint Occupancy and Sharing Agreement and Sublease. The parties acknowledge that the City intends to enter into a concurrent lease agreement for those portions of the Property that are not included as part of the Shop (the "Cityfest Lease Area"), which includes the grounds and horse stables, to Cityfest (the lease between the City and Cityfest being hereinafter referred to as the "Cityfest Lease"). In order to promote the joint use of the Property by Urban Bike Project and Cityfest, the City is requiring Cityfest and Urban Bike Project to enter into an Joint Occupancy and Sharing Agreement (the "Sharing Agreement"), which Sharing Agreement shall be in the form attached hereto as Exhibit B. The Sharing Agreement shall govern the respective use of the Property by Urban Bike Project and Cityfest and allocate responsibilities between those parties with respect to the Property. In particular, the Sharing Agreement shall provide (i) Cityfest with access to at least one bathroom in the Shop, (ii) Urban Bike Project with access to the grounds, (iii) security measures that Urban Bike Project and Cityfest must undertake to protect the safety of individuals and personal property and fixtures within the Shop, grounds and horse stables, (iv) a reimbursement mechanism whereby a party that suffers damage as a result of the other party's breach of the Sharing Agreement shall be made whole by the breaching party and (v) Cityfest with the right to sublease all or a portion of the second floor of the Shop pursuant to a sublease in the form attached hereto as Schedule 1 (the "Cityfest Sublease").

(6) Right of First Option. Urban Bike Project shall have a right of first option to lease the Cityfest Lease Area if the Cityfest Lease terminates or expires. The City shall provide notice to Urban Bike Project upon the termination or expiration of the Cityfest Lease, in which event, Urban Bike Project may elect to incorporate the Cityfest Lease Area into the leased premises under this Lease. If Urban Bike Project chooses to incorporate the Cityfest Lease Area into this Lease, it must notify the City within ninety (90) days of receiving such notice that it wishes to amend this Lease to include the entire Property. Upon receipt of such notice, the City and Urban Bike Project shall enter into an amendment to this Lease that shall amend the lease area covered by this Lease to include the entire Property. If Urban Bike Project declines to exercise this right or fails to provide the required notice that it intends to exercise this right within the ninety (90) day period, then Urban Bike Project shall have no further rights or options with respect to the Cityfest Lease Area.

(7) Condition of the Property and Shop. Urban Bike Project shall inspect the Property (including the Shop) prior to the commencement of the initial term of the Lease to familiarize itself with the condition of the Property and the Shop. Urban Bike Project acknowledges that the Shop is being leased in its "as is" condition and without any warranty or representation as to the condition of the Property (including the Shop) or Urban Bike Project's ability to use the Shop for the intended purposes. The City shall bear no responsibility for the condition of the Property (including the Shop), including but not limited to, any environmental conditions that may exist on the Property or within the Shop.

(8) Maintenance/Improvements.

- a. Urban Bike Project, at its sole cost and expense, shall be responsible for all maintenance, repairs and replacements with respect to the Shop, including all capital items. Urban Bike Project shall maintain the Shop and all related improvements in a good and safe condition and in compliance with all applicable laws. The City shall have no maintenance, repair or replacement obligations with respect to the Shop and any related improvements. Any alterations or improvements to be made to the Shop shall be made at Urban Bike Project's sole cost and expense after review and approval by the City of the applicable plans and specifications, as required by the Wilmington City Code. All maintenance, repairs, replacements, improvements or alterations done at the Shop shall be performed in a good and workmanlike manner.
- b. Urban Bike Project shall take all actions reasonably recommended by the City to avoid harming or removing any trees on the Property. Urban Bike Project shall not remove any tree without obtaining the prior written consent of the City's Urban Forest Administrator. To the extent that Urban Bike Project must remove any trees, Urban Bike Project, at its sole cost and expense, shall provide at least two (2) replacement trees in accordance with Wilm. C. (Code) § 46-32.
- c. During the term, Urban Bike Project shall cause the sidewalks adjacent to the Property to be maintained in a good and safe condition, free and clear of snow, ice, grass, debris and trash.
- d. Nothing in this Agreement shall preclude Urban Bike Project and Cityfest from allocating responsibility for the maintenance of the Property amongst themselves in a fair and equitable manner.

(9) Taxes; Utilities.

- a. During the term of this Lease, Urban Bike Project shall be liable, on a joint and several basis with Cityfest, for the payment of any real estate taxes that may be assessed, levied, or imposed upon the Property or any part thereof, or the use or occupancy thereof, if any.
- b. During the term of this Lease, Urban Bike Project shall be liable, on a joint and several basis with Cityfest, for the payment of any and all water, sewer, stormwater, gas, electricity, heating fuel, telephone, cable, internet and trash service fees and charges incurred by or charged against all or any portion of the Property (collectively, "Utility Charges").
- c. Nothing in this Lease shall preclude the Urban Bike Project and Cityfest from allocating responsibility for the payment of real estate taxes and Utility Charges amongst themselves in a fair and equitable manner.

(10) Insurance. During the term of this Lease, Urban Bike Project shall keep and maintain in full force and effect, at its sole cost and expense:

- a. Commercial general liability insurance against any claims for bodily injury, death or property damage, occurring on, in or about the Property, and against contractual liability for any such claims, with a combined single limit of \$1,000,000;
- b. Workers compensation insurance as required by applicable law, and, during all periods of construction at the Shop, commercially reasonable builder's risk insurance; and
- c. Other insurance as may be deemed prudent by Urban Bike Project, including but not limited to, fire and casualty insurance on the building and other improvements comprising the Shop.
- d. Nothing in this Agreement shall preclude Urban Bike Project and Cityfest from agreeing to comply with additional insurance requirements in the Sharing Agreement that do not conflict with the insurance requirements in this Section (10).

All policies of insurance required by this Lease shall be maintained with insurance underwriters authorized to do business in the State of Delaware. During the term of this Lease, Urban Bike Project shall not permit or cause the cancellation or reduction of coverage of any insurance required hereunder without the City's approval. Urban Bike Project shall further name the City as an additional insured under the insurance required by this Lease.

(11) Indemnification. Urban Bike Project covenants and agrees to indemnify, defend and hold harmless the City, its officers, agents and employees, against any suit or claim of any kind for damages or injury to persons or property sustained on the Property during the term of this Lease or arising from the use of the Property during the term of this Lease, including environmental claims attributable to Urban Bike Project's use of the Shop, but excluding any claim arising out of or resulting from the City's grossly negligent and/or intentionally unlawful conduct. The parties acknowledge and agree that Cityfest is not an intended beneficiary of this Section (11) and shall have no rights under or pursuant to this Section (11).

(12) Fire or Other Casualty.

- a. In the event that the Shop is rendered wholly unfit, by fire or other casualty, for the uses and purposes of Urban Bike Project hereunder, then this Lease shall terminate on the date of such fire or casualty.
- b. In the event that the Shop is rendered partially unfit, by fire or other casualty, then Urban Bike Project shall have one hundred twenty (120) days following such fire or casualty to determine whether, in the judgment of Urban Bike Project, the Shop can be repaired with reasonable promptness so as to be fit for Urban Bike Project's use and purposes. If Urban Bike Project notifies the City within the one hundred twenty (120) day period of its election to pursue the repair of the Shop, then this Lease shall continue as set forth herein, and Urban Bike Project, at its sole cost

and expense, shall make the necessary repairs to the Shop in a timely, good and workmanlike manner without unreasonable delay. If Urban Bike Project fails to notify the City of its decision within the one hundred twenty (120) day period or declines to pursue the repair of the Shop, then this Lease shall automatically terminate upon the conclusion of the one hundred twenty day (120) period and Urban Bike Project shall surrender possession of the Shop to the City.

(13) Mechanic's Liens. Urban Bike Project agrees to immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialman's or other lien against the Shop or Property which may arise out of any payment due for or purported to be due for any labor, services, materials, supplies or equipment alleged to have been furnished to or for Urban Bike Project in, on, or about the Shop or Property.

(14) Assignment/Sublease. Urban Bike Project shall not assign this Lease or sublet the Shop or otherwise transfer the rights and obligations under this Lease without the prior written consent of the City, except that Urban Bike Project may sublease the second floor of the Shop to Cityfest pursuant to the Cityfest Sublease. Any assignment, sublease, or other transfer in violation of this provision shall result in automatic termination of this Lease.

(15) Compliance with Laws. Urban Bike Project shall operate and maintain the Shop in accordance with all applicable federal, state, and local laws, rules and regulations.

(16) Termination.

a. This Lease shall terminate automatically at the expiration of the initial term, unless said initial term is extended as provided herein.

b. In the event that Urban Bike Project breaches any term or condition of this Lease and, after written notice of such default by the City, fails to cure such default within sixty (60) days after receipt of such notice, or such default is of such a character as to require more than sixty (60) days to cure and Urban Bike Project fails to commence to cure such default through the exercise of reasonable diligence within that sixty (60) day period, the City may terminate this Lease immediately by giving Urban Bike Project written notice of the termination and the reasons therefor.

c. The City may terminate this Lease in the event that the Urban Bike Project fails to meet the fundraising goal set forth in Section (4)e. above.

d. The parties may terminate this Lease upon mutual consent.

e. Upon the termination or expiration of this Lease, Urban Bike Project shall promptly remove all of its personal property and effects from the Shop, except fixtures which have become part of the realty, and peacefully yield up the Shop to the City.

f. Upon termination of this Lease, all improvements to the Shop that are not otherwise removed by the Urban Bike Project shall become the property of the City.

g. Urban Bike Project shall be liable to the City for any damage to the Shop, normal wear and tear excepted.

(17) Estoppel. Urban Bike Project shall, from time to time, within ten (10) days of a written request from the City, execute and deliver to the City a written statement stating: (a) the date this Lease was executed and the date it expires; (b) the date Urban Bike Project entered into occupancy of the Shop; and (c) certifying that (1) this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date of the agreement so affecting this Lease); (2) the City is not in breach of this Lease (or, if so, a description of each such breach) and that no event, omission or condition has occurred which would result, with the giving of notice or the passage of time, in a breach of this Lease by the City; (3) this Lease represents the entire agreement between the parties with respect to the Shop; and (4) such other information as may be reasonably requested by the City.

(18) City Council Approval. This Lease shall not be effective, and neither party shall have any rights or obligations hereunder, unless and until this Lease is approved by resolution of the City Council of the City of Wilmington.

(19) Notice. Any notice required hereunder to be given to Urban Bike Project shall be sufficient if in writing and sent by certified mail, overnight courier service or hand delivery to 201 W. 17th Street, Wilmington, DE 19802, with a copy to each of Laura Wilburn, Executive Director, at Wilburn.laura@gmail.com, and Adam Singer, Board Member, at asinger47@gmail.com. Any notices required hereunder to be given to the City shall be sufficient if in writing and sent by certified mail, overnight courier service or hand delivery to City of Wilmington Law Department, Louis L. Redding City/County Building, 9<sup>th</sup> Floor, 800 N. French Street, Wilmington, Delaware 19801.

(20) Binding Effect. Without limiting Section (14) above, this Lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns. This Lease constitutes the entire agreement between the parties hereto and shall not be changed, amended or otherwise modified except by a writing signed by Urban Bike Project and the City.

(21) Access to Property. The City shall have the right to inspect the Property at any time. Further, the City hereby reserves the right to impose easements on, under and across any portion of the Property for existing and future utilities.

(22) Wage Tax. Urban Bike Project shall be responsible, if applicable, for the payment of City wage taxes for its employees in accordance with the City of Wilmington's Wage Tax Law as it may be amended from time to time. Urban Bike Project shall provide the City with a list of all contractors and subcontractors working on the renovations described in Section (4)d. of this Lease and copies of their respective City of Wilmington business licenses and wage tax account numbers. On a quarterly basis, Urban Bike Project shall provide the City with a reporting sheet that describes the total amount paid to each respective contractor and subcontractor for labor during the previous calendar quarter and in the aggregate for their work on such renovations. The City shall also have the right to review and audit the payroll records of the Urban Bike Project.

(23) Governing Law. This Lease shall be governed by the laws of the State of Delaware.

(24) Severability. In the event that a portion of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall not be affected thereby, but shall remain in full force and effect.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have entered into this Lease the date and year first above mentioned.

**CITY OF WILMINGTON**

**URBAN BIKE PROJECT OF  
WILMINGTON, INC.**

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
City Clerk

Attest: \_\_\_\_\_  
Secretary

Approved as to form

\_\_\_\_\_  
Assistant City Solicitor

Exhibit B

