

AN ORDINANCE TO AUTHORIZE THE DELAWARE CENTER FOR HORTICULTURE TO LEASE FIVE CITY OWNED PARCELS OF REAL ESTATE TO BE USED AS A COMMUNITY GARDEN

#4044

Sponsor:

President
Gregory

Council
Member
D. Brown

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by Ordinance; and

WHEREAS, the City desires to enter into a contract to lease five City owned parcels of real estate, located at 1108 - 1116 E. 12th Street and 1125-1127 Brandywine Street to the Delaware Center for Horticulture ("DCH"); and

WHEREAS, the City has negotiated an Agreement (the "Agreement") with DCH for a term of five (5) years at a nominal payment of \$1.00 per year; and

WHEREAS, the Agreement shall begin upon execution hereof and end approximately April 30, 2020, unless terminated sooner as provided therein; and

WHEREAS, it is the recommendation of the Department of Real Estate and Housing that the City enter into the Agreement as described above, a copy of which is attached hereto and incorporated by reference as Exhibit "A".

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

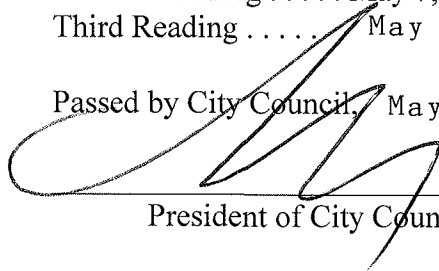
SECTION 1. The Agreement between the City and the Delaware Center for Horticulture whereby the City will lease five (5) parcels of City owned real estate to the Delaware Center for Horticulture for use as a community garden, upon the recommendation

of the Department of Real Estate and Housing, at a price outlined on Schedule "A" of the Agreement a copy of which is attached hereto and incorporated by reference herein as Exhibit "A", is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute as many copies of said Agreement, as well as all additional undertakings related thereto, as may be necessary.

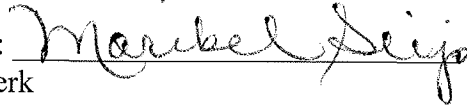
SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading May 7, 2015
Second Reading May 7, 2015
Third Reading May 21, 2015

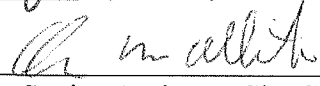
Passed by City Council, May 21, 2015



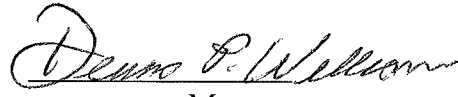
President of City Council

ATTEST: 

City Clerk

Approved as to form this
6 day of May, 2015


Senior Assistant City Solicitor

Approved this 28 day of
May, 2015


Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into an Agreement with the Delaware Center for Horticulture whereby the City will lease five (5) parcels of City owned real estate to the Delaware Center for Horticulture for use as a community garden.

Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into this _____ day of May, 2015 by and between City of Wilmington, (hereinafter referred to as "Landlord") and Delaware Center for Horticulture, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the Landlord is the fee owner of certain real property being, lying and situated in New Castle County, Delaware, such real property as shown on Exhibit "A" and described as the parcels at 12th and Brandywine Streets, (hereinafter referred to as the "Premises").

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant desires to lease the Premises from Landlord on the terms and conditions as contained herein;

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the above described Premises together with any and all appurtenances thereto, for a term of five (5) years, such term beginning on May 1, 2015 and ending on April 30, 2020.
2. **RENT.** The total rent for the term hereof is the sum of ONE DOLLAR (\$1.00), the receipt of which is hereby acknowledged.
3. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant exclusively for the purpose of a community farm for the 11th Street Bridge community. The purpose of this farm will be to provide a space for residents to learn how to grow food and a place to do so. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.
4. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean condition.
5. **ASSIGNMENT AND SUB-LETTING.** Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof.
6. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations

to the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

7. **HAZARDOUS MATERIALS.** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
8. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.
9. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Tenant shall remove all trash, garbage, rubbish or refuse and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the property.
10. **INSPECTION OF PREMISES.** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises.
11. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Tenant shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements expected.
12. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, guests, invitees, agents or employees or to any person entering the Premises or to goods or equipment and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any and all claims or assertions of every kind and nature.
13. **DEFAULT.** If Tenant fails to comply with any of the material provisions of this Agreement, other than the covenant to pay rent, or of any present rules and regulations or any that may be hereafter prescribed by Landlord, or materially fails to comply with any duties imposed on Tenant by statute, within seven (7) days after delivery of written notice by Landlord specifying the non-compliance and indicating the intention of Landlord to terminate the Lease by reason thereof, Landlord may terminate this Agreement.
14. **GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Delaware.

15. **SEVERABILITY.** If any provision of this Agreement or the application thereof shall be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
16. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Landlord or Tenant.
17. **CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.
18. **NON-WAIVER.** No indulgence, waiver, election or non-election by Landlord under this Agreement shall affect Tenant's duties and liabilities hereunder.
19. **MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended except through a written amendment signed by all of the parties hereto.
20. **NOTICE.** Any notice required or permitted under this Lease or under state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

City Solicitor
City of Wilmington
800 French Street
Wilmington, DE 19801

If to Tenant to:

Delaware Center for Horticulture
1810 N. DuPont Street
Wilmington, DE 19806

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

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CITY OF WILMINGTON

ATTEST:

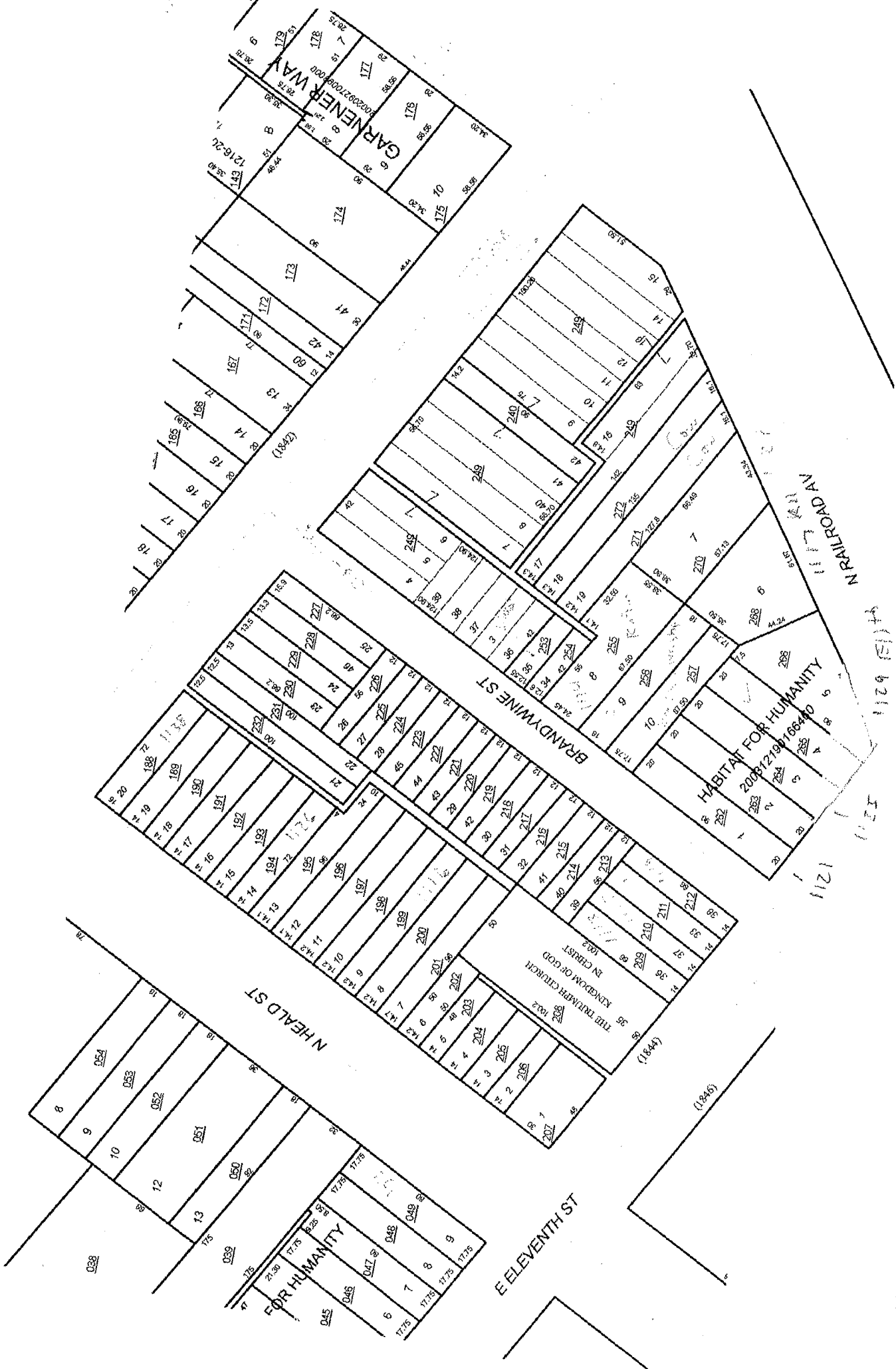
City Clerk

Mayor

DELAWARE CENTER HORTICULTURE

Approved as to form this _____ day
of April, 2015.

Assistant City Solicitor



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CITY OF WILMINGTON
GENERAL TERMS AND CONDITIONS

1. Insurance Coverage.

Consultant shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the City. Consultant shall provide the City with a certificate of insurance evidencing the above-stated coverage and naming the City as an additional insured.

2. Use of Subcontractors.

Consultant may use qualified consultants, subconsultants, or subcontractors to perform the services required under this Agreement upon the approval of the City.

3. Discrimination.

In the performance of this Agreement, the parties agree that they shall not discriminate or permit discrimination against any person because of age, sex, marital status, race, religion, color, or national origin.

4. Indemnification.

Consultant shall defend, indemnify, and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorney's fees, resulting from the negligent acts or omissions of Consultant, its employees, agents, subcontractors, consultants, or subconsultants in performing the services required under this Agreement.

5. Records.

Consultant 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 deemed necessary by the City to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the City or its authorized representatives upon request.

6. Reports and Information.

Consultant, at such time and in such form as the City may require, shall furnish the City such periodic reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement. Time is of the essence of this Agreement.

7. Business License.

Consultant shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

8. Taxes.

Consultant shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

9. Findings Confidential.

All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted or generated by Consultant under this Agreement are confidential, and Consultant agrees that such documents shall not be made available to anyone, without the prior written approval of the City.

10. Ownership of Information

All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, brochures, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted, or generated by Consultant in connection with this Agreement shall become the exclusive property of the City. Consultant may keep copies of such documents for its records.

11. Notices

Any notice which is required or may be given in connection with this Agreement shall be addressed to the parties as follows:

The City:

City Solicitor
Law Department 9th floor
City of Wilmington
800 N. French Street
Wilmington, Delaware 19801

12. Independent Contractor

Consultant (and its employees and agents) is an independent contractor and not an employee or agent of the City.

13. Oral Modifications.

This Agreement may not be changed orally, but only by an agreement in writing and signed by both parties.

14. Successors and Assigns.

This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and Consultant, and their respective legal representatives, successors, and assigns.

15. Delinquent Tax Clause.

The City shall have the right to set off against all monies due and payable under the provisions of this contract, a sum representing the total amount of delinquent taxes and other debts owed the City of Wilmington by the Consultant.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/24/2009

PRODUCER (302) 655-5300
Business Insurance Services, Inc.
ABS Insurance Services, LLC.
109 N DuPont Rd P O Box 4380
Greenville DE 19807-

INSURED
Delaware Center For Horticulture In
1810 N. Dupont Street
Wilmington DE 19806-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: HARFORD MUTUAL INSURANCE	14141
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	9074163	01/01/2009	01/01/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000 BI								
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		/ /	/ /	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		/ /	/ /	AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
		EXCESS UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$		/ /	/ /	EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below		/ /	/ /	<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER													
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E.L. DISEASE - POLICY LIMIT	\$													
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DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Add locations: 1106-1116 E 12 th St and 1125-1127 E. Brandywine St.

CERTIFICATE HOLDER

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 City of Wilmington
 800 French Street

 Wilmington DE 19801-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 010 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE 