

RES 15-021

Wilmington, Delaware  
May 21, 2015

#4049

Sponsor:  
Council  
Member  
Shabazz

**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**, Carriage House Associates LLC (the “Seller”), a Delaware Limited Liability Company, has agreed to sell, and the City through the Office of Economic Development has agreed to purchase, contingent upon Wilmington City Council (“Council”) approval, the real property located at 726 A Street, Wilmington, Delaware, being Tax Parcel No.26-050.00-061 (the “Property”) for \$100,000.00. That certain Agreement of Sale is attached hereto as Exhibit “A”; and

**WHEREAS**, the City intends to utilize the Property for the development of the South Wilmington Wetlands Project and for the remediation of flooding in the Southbridge neighborhood; and

**WHEREAS**, the South Wilmington Wetlands Project and the land acquisition of the Finger-Gordon Property was approved by Ordinance 13-025 on September 4, 2013; and

**WHEREAS**, it was anticipated that the project may require additional land acquisition; and

**WHEREAS**, the hydraulic design of the South Wilmington Wetlands Project has been completed and that design calls for a second hydraulic connection between the Finger-Gordon Property and the Christina River; and

**WHEREAS**, the Property will be used to make the second hydraulic connection between the Finger-Gordon Property and the Christina River; and

**WHEREAS**, the Property has been appraised at a value of \$111,000.00; and

**WHEREAS**, the funding for this acquisition was approved as part of the 2014 Capital Improvement Plan, with the Water/Sewer fund being the source of the funding.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the Council authorizes and approves the acquisition of the Property by the City from Seller for One Hundred Thousand Dollars (\$100,000.00).


**BE IT FURTHER RESOLVED** that Council authorizes the Mayor or his designee to execute any and all documents and to take all actions necessary to effectuate the purchase and transfer of the Property to the City.

Passed by City Council,  
May 21, 2015

ATTEST:

  
City Clerk

Approved as to form this 21<sup>st</sup>  
day of May, 2015.

  
Assistant City Solicitor

**SYNOPSIS:** This resolution authorizes the City to acquire Tax Parcel No. 26-050.00-061 from Carriage House Associates LLC for \$100,000.00. The Property will be used as part of the South Wilmington Wetlands Project.

# **Exhibit A**

## AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") is made this 31 day of March, 2015 (the "Effective Date"), by and between CARRIAGE HOUSE ASSOCIATES LLC (the "Seller") and the CITY OF WILMINGTON, a Delaware municipal corporation ("Buyer").

### WITNESSETH THAT:

WHEREAS, Seller is the legal owner of that certain parcel of real property located at 726 A Street, Wilmington, Delaware, being Tax Parcel No. 26-050.00-061 (the "Property"); and

WHEREAS, Seller desires to sell the Property and Buyer, subject to the conditions set forth in this Agreement, desires to acquire the Property.

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties hereto, intending to be legally bound hereby, do covenant and agree with each other as follows:

1. Purchase and Sale of Property. Subject to the terms and conditions hereinafter set forth, Seller does hereby agree to sell and convey to Buyer, and Buyer does hereby agree to purchase, (i) the Property, together with all of the right, title and interest, if any, of Seller in all easements, privileges and rights belonging to and benefiting the Property and any improvements and appurtenances thereto and (ii) all of the right, title and interest, if any, of Seller in any adjacent or abutting lands lying in the beds of streets or roads.

2. Closing. Subject to the contingencies set forth in Section 11 of this Agreement, the closing under this Agreement (the "Closing") shall take place on the tenth (10<sup>th</sup>) business day following the end of the Due Diligence Period (the "Closing Date"). The Closing shall occur at the offices of the Buyer's closing attorney at 2 p.m. or at such other time and/or location that is mutually acceptable to all parties.

3. Purchase Price.

a. The purchase price (the "Purchase Price") that shall be paid to the Seller, and which the Seller agrees to accept for the Property, shall be the sum of One Hundred Thousand Dollars (\$100,000.00).

b. The Purchase Price will be paid to Seller at Closing, subject to any adjustments or prorations provided herein.

4. Title and Conveyance. At Closing, the title to the Property shall be conveyed to Buyer in fee simple by special warranty deed and shall be good and marketable and free and clear of all liens, encumbrances, easements, reservations, restrictions and encroachments of any nature, except for those non-monetary title defects designated as "Permitted Exceptions" as provided in this paragraph (the "Permitted Exceptions"). During the Due Diligence Period, Buyer shall, at Buyer's expense, order a title report (the "Title Report") for the Property. On or before the end of the Due Diligence Period, Buyer shall give written notice to Seller of any

objections which Buyer may have to title defects disclosed by the Title Report. If Buyer fails to give notice to Seller by such date, Buyer shall be deemed to have waived its right to object to any non-monetary title defects disclosed by the Title Report, which shall thereafter be deemed to be Permitted Exceptions. Within five (5) business days of receipt of any such notice of objection, Seller shall give notice to Buyer of whether Seller intends to attempt to cure such title defects prior to Closing. In the event Seller elects to refuse to attempt to cure such title defects or if, having commenced attempts to cure any objection, Seller later notifies Buyer that Seller will be unable to effect a cure thereof by Closing or no longer desires to attempt to cure such objection, Buyer shall have five (5) business days from the receipt of Seller's refusal notice in which to elect (i) to proceed to Closing notwithstanding such title defects, or (ii) to terminate this Agreement, and the parties shall have no further rights or obligations hereunder except for any right or obligation under any Section of this Agreement which by its terms survives any termination hereof. In the event Seller elects to attempt to cure all such title defects, then this Agreement shall continue in effect, subject to Buyer's termination right as set forth herein if Seller subsequently is unable or declines to cure a matter to which Buyer has objected. Seller agrees not to voluntarily encumber the Property from and after the Effective Date through the Closing or termination of this Agreement without Buyer's consent. Buyer may object to any title matters arising or being recorded after the effective date of the Title Report, in which case, Seller shall have the same option to attempt to cure and Buyer shall have the same option to accept title subject to such matters or to terminate this Agreement as those which apply to any notice of objections made by Buyer on or before the end of the Due Diligence Period. The deed for the sale of the Property to the Buyer shall only include the nominal sum of \$10 as the listed consideration.

5. Possession. At the Closing, Seller shall deliver to Buyer actual possession of the Property by delivery of a deed, and the Property shall be conveyed vacant, unoccupied and subject to no rights in any party to occupy the same. Buyer may inspect the Property prior to Closing in order to confirm that the Property is vacant and unoccupied.

6. Due Diligence.

a. Buyer and its employees, agents, representatives, contractors and subcontractors shall have an investigation period beginning on the Effective Date and ending on the earlier to occur of (i) May 29, 2015 or (ii) the date that the City Contingencies listed in clauses (iii) and (iv) of Section 11(a) of this Agreement have been satisfied (the "Due Diligence Period") to access and inspect the Property and to conduct such tests, investigations and other due diligence matters that Buyer, in its sole and absolute discretion, deems necessary or advisable to determine the suitability of the Property for its intended use as part of a public stormwater management facility, including but not limited to, the right to conduct surveys, engineering studies, soil tests, environmental studies and any other tests or studies which Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Within ten (10) days of the Effective Date, Seller shall promptly turn over to Buyer or otherwise make available to Buyer all information, surveys, plans, reports, tests, studies or other related documents, that are in the possession, custody or control of Seller or Seller's employees, agents, contractors or subcontractors with respect to past or present generation, use, handling, storage, treatment, release, discharge, emission, leakage, spillage, removal or disposal of any Regulated Substances (hereinafter defined) at the Property in violation of any applicable federal, state and

local environmental statutes, regulations, ordinances and permits (collectively "Environmental Laws"). For the purpose of this Agreement, the term "Regulated Substances" shall mean hazardous substances (as that term is defined in the Comprehensive Environmental Response Compensation and Liability Act, 45 U.S.C. Paragraph 9601 et seq., or any applicable state laws), hazardous materials (as defined in the Hazardous Materials Transportation Act, 49 U.S.C. Paragraph 1801 et seq. or any applicable state law) or petroleum or petroleum related products.

b. Seller will reasonably cooperate with Buyer and Buyer's employees, agents, representatives, contractors and subcontractors in Buyer's investigation of the Property, including without limitation: (i) complying with reasonable requests for information and records; and (ii) assisting Buyer in obtaining governmental agency and other records.

c. If Buyer's inspections, surveys, studies or tests reveal any condition that is unacceptable to Buyer, then Buyer, in its sole and absolute discretion, shall have the right (but not the obligation) to terminate this Agreement by giving written notice to Seller at any time on or before the last day of the Due Diligence Period. The parties hereby acknowledge and agree that the last day of the Due Diligence Period shall be no later than May 29, 2015. Upon the termination of this Agreement by the Buyer in accordance with this Section 6(c), the parties hereto shall have no further rights or obligations hereunder except for any right or obligation under any Section of this Agreement which by its terms survives any termination hereof.

7. Representations or Warranties of Seller. Seller does hereby represent and warrant that, the following representations and warranties are true and correct at the time of execution of this Agreement, and Seller shall be deemed to have reaffirmed such representations and warranties as of the date of Closing:

a. Seller is a Delaware limited liability company, validly existing and in good standing under the laws of the State of Delaware, with all legal power and authority to undertake, observe and perform all of Seller's agreements and obligations hereunder and under Seller's Closing Documents (hereinafter defined).

b. Seller's entry into this Agreement and the observance and performance of each of Seller's agreements and obligations hereunder have been duly authorized by all necessary action of Seller.

c. The execution and delivery of this Agreement will not conflict with or result in a breach of any law, regulation or order, or any agreement or instrument to which Seller is a party or by which Seller is bound or the Property is subject, and this Agreement and the documents to be delivered by Seller pursuant to this Agreement, will each constitute the legal, valid, and binding obligations of Seller; and there are no claims, defenses (personal or otherwise) or offsets to the validity of or enforceability against Seller of this Agreement and the documents to be delivered pursuant hereto.

d. No leases, options, agreements of sale, licenses, rights of first refusal, restrictive covenants, unrecorded easements, rights of possession or any other occupancy or access agreements are presently in existence, or shall be in existence at the date of Closing

hereunder, with regard to the Property or any portion thereof, and no individual or entity other than the Seller shall be in possession of any portion of the Property at Closing.

e. Seller has not received notice of any pending or threatened actions, proceedings or potential actions from any (i) governmental agency, (ii) entity, or (iii) individual, involving the Property or any portion of the Property.

f. To Seller's knowledge, there are no underground storage tanks located on the Property.

8. Brokers. Buyer and Seller represent to each other that neither party has dealt with any broker or intermediary in connection with this transaction and each agrees to indemnify and hold the other harmless from any breach of such representation, warranty and covenant.

9. Adjustments and Incidental Costs. Real estate taxes and water, sewer and storm water fees payable to the City of Wilmington for the Property, shall be apportioned as of the date of Closing. Seller shall be solely responsible for petitioning New Castle County for the return of any County real estate taxes previously paid by Seller or paid at Closing from the Purchase Price that may be refundable due to the sale of the Property to Buyer.

10. Closing Documents.

a. At Closing, Seller shall execute and deliver to Buyer the following (all of which shall be in a form reasonable acceptable to Buyer and all of which are sometimes collectively referred to herein as "Seller's Closing Documents"):

i. A special warranty deed for the Property, which shall be prepared by Buyer (subject to Seller's reasonable approval of form and content), and any transfer tax affidavits or forms required to record such deed;

ii. All documents reasonably required by Buyer's title company that are necessary in order for the title company to issue an ALTA form of owner's title insurance policy at its regular rates to Buyer for the Property, which policy shall only have the Permitted Exceptions as exceptions to such policy;

iii. All documents reasonably required by Buyer evidencing the authority and power of Seller to consummate the transactions contemplated herein;

iv. A signature page for a mutually agreed-upon closing statement;

v. A certification under Section 1445 of the Internal Revenue Code, stating that Seller is not a foreign person, in form sufficient to absolve Buyer from liability for failing to withhold ten (10%) of the Purchase Price; and

vi. Such other documents reasonably requested by Buyer to effectuate the transfer of the Property to Buyer.

b. At Closing, Buyer shall execute and deliver to Seller the following (all of which are sometimes collectively referred to herein as "Buyer's Closing Documents"):

i. A signature page for a mutually agreed-upon closing statement.

11. City Contingencies.

a. Buyer shall not be obligated to complete Closing unless and until the following conditions have been satisfied in full (collectively, the "City Contingencies"):

i. Seller must not be in default of any of its obligations hereunder.

ii. All of the Seller's representations or warranties in Paragraphs 7 and 8 of this Agreement must be true and accurate as of the date of the Closing, and title to the Property must be as described in Paragraph 4 of this Agreement.

iii. The Wilmington City Council must have approved of the acquisition of the Property pursuant to this Agreement.

iv. Buyer must have entered into a Brownfields Development Agreement with the Division of Waste and Hazardous Substances, Site Investigation and Restoration Section for the State of Delaware's Department of Natural Resources and Environmental Control for the Property.

b. In the event that the City Contingencies have not been satisfied by the Closing Date, unless further extended by written agreement of the parties, Buyer may elect to have this Agreement terminated and become null and void, so that the parties will have no further obligation to or claims against one another under this Agreement, or Buyer may waive, in its sole discretion, any or all of such conditions and complete Closing.

12. Site Evaluation/Notice to Buyer. (This notice is required by 25 Del.C. Chapter 3 §313 for the sale of unimproved real estate). If the Property being purchased hereunder is an unimproved parcel of land, Buyer should consult with the appropriate public authorities to ascertain whether central sewerage and water facilities are available, or if not, whether the Property will be approved by appropriate authorities for the installation of a well and private sewerage disposal system. If central sewerage and water facilities are not available, then this Agreement is contingent upon 1) a satisfactory site evaluation that will allow the installation of an approved on-site disposal system, in accordance with the regulations promulgated by the Department of Natural Resources & Environmental Control, that is acceptable to the Buyer; 2) the availability of a water supply; and 3) the Property conforming with the local zoning ordinance; or this Agreement shall become null and void, and all refundable deposits owed to Buyer shall be returned to the Buyer.

This section is waived in its entirety pursuant to the addendum attached hereto.

13. Time is of the Essence. Time is of the essence for the performance of this Agreement.



14. Default by Seller. In the event that Seller shall violate or fail to fulfill and perform any of the terms and conditions of this Agreement required to be performed by Seller, Buyer shall be permitted to exercise any right or remedy available to Buyer at law or in equity on account of Seller's default hereunder, including, but not limited to, the right to compel specific performance of Seller's obligations hereunder. Formal tender of purchase monies is hereby waived.

15. Entire Agreement. This is the entire agreement between the parties in connection with the purchase of the Property. There are no oral promises, conditions, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition is to be made to this Agreement except by written agreement executed by both parties hereto. No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

16. Governing Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Delaware.

17. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be sent prepaid by (i) certified mail, return receipt requested, (ii) overnight courier of national or regional recognition (such as Federal Express), or (iii) personal delivery:

a. If intended for Seller:

\_\_\_\_\_  
H. Hunter Lott, III  
\_\_\_\_\_  
Hunter Lott Realty Co.  
\_\_\_\_\_  
807 A Street  
\_\_\_\_\_  
WIL, DE 19801  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
Thomas Marconi, Esq.  
\_\_\_\_\_  
1813 N. Franklin Street  
\_\_\_\_\_  
Wilmington, DE 19899  
\_\_\_\_\_

b. If intended for Buyer:

City of Wilmington Office of Economic Development  
Louis L. Redding City/Cty. Bldg., 3<sup>rd</sup> Floor  
800 N. French Street  
Wilmington, DE 19801  
Attn: Director

with a copy to:

City of Wilmington Law Department  
Louis L. Redding City/Cty. Bldg., 9<sup>th</sup> Floor

800 N. French Street  
Wilmington, DE 19801  
Attn: City Solicitor

18. Assignability. Buyer shall have the right to assign or otherwise transfer this Agreement and its rights hereunder to any government entity designated by Buyer.

19. Captions and Headings. The captions and headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Agreement.

20. Binding Agreement. This Agreement (and the benefits and burdens thereof) shall extend to and bind the heirs, administrators, executors, successors and assigns of the respective parties hereto.


21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and when attached hereto shall constitute a single instrument. Any executed signature page may be transmitted to the other party by facsimile transmission or as an electronic file (such as .PDF).

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first written above.

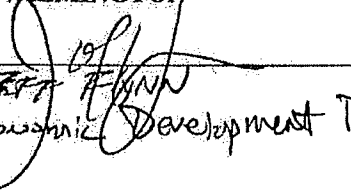
**SELLER:**

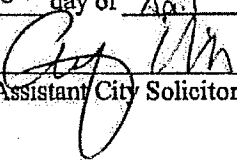
**CARRIAGE HOUSE ASSOCIATES LLC**

By:   
Name: H. HUSTON LOTT, III  
Title: MANAGING PARTNER

**BUYER:**

**CITY OF WILMINGTON**

By:   
Name: JEFF FLYNN  
Title: Economic Development Director

Approval as to form this  
20th day of April, 2015  
  
Assistant City Solicitor

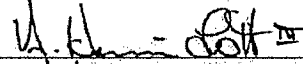
**AGREEMENT OF SALE BETWEEN CARRIAGE HOUSE ASSOCIATES LLC AND  
THE CITY OF WILMINGTON FOR TAX PARCEL NOS. 26-050.00-061**

**WAIVER ADDENDUM FOR 25 DEL.C. §313**

By their signature(s) below, the parties agree that Buyer waives the provisions of the Site Evaluation/Notice to Buyer set forth in the Agreement of Sale attached hereto. Buyer acknowledges that Buyer has read and understands the Notice to Buyer. Buyer voluntarily waives and gives up such Notice to Buyer provision in its entirety. Buyer understands that by waiving such provisions, the Agreement and the obligation of Buyer to purchase this Property is not contingent or dependent upon a satisfactory site evaluation, or the availability of central or on-site sewerage and water facilities or the conformity of the property with local zoning ordinance. Buyer and Seller agrees that this Agreement is not made null and void if an unsatisfactory site evaluation of the property is made or if central water supply or on-site wastewater/sewerage and water facilities are not available to the Property or if property does not conform to the local zoning ordinances. Buyer acknowledges that this waiver addendum is not made in reliance on any information, data, material statement or representation made by the Seller. **NO WAIVER OCCURS UNLESS SIGNED BELOW BY ALL PARTIES.** It is understood by Buyer that a site evaluation does not guarantee the issuance of a septic permit.

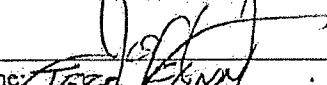
**SELLER:**

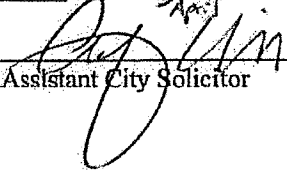
**CARRIAGE HOUSE ASSOCIATES LLC**

By:   
Name: H. HESTER LOTT III  
Title: MANAGING PARTNER

**BUYER:**

**CITY OF WILMINGTON**

By:   
Name: JEFF FLYNN  
Title: Economic Development Director

Approval as to form this  
26th day of March, 2015  
  
Assistant City Solicitor