

Wilmington, Delaware
October 17, 2019

#4714

Sponsor:

**Council
Member
Congo**

WHEREAS, on September 29, 2016, the City of Wilmington (the “City”) and Wilmington Housing Partnership Corporation, a Delaware non-profit corporation (the “Corporation”), entered into a Loan Agreement, attached hereto as Exhibit “A” (the “Loan Agreement”) wherein the Corporation covenanted to pay to the City principal of, and interest on, a certain promissory note issued under the Loan Agreement (the “Note”) to secure proceeds from the City in an amount of \$3,378,371.67 (the “Loan Proceeds”); and

WHEREAS, the City recognizes the failure of the Corporation to pay, on or before their due dates, certain interest installments on, and principal balance of, the Note as an event of default; and

WHEREAS, the Chief of Staff of the Office of the Mayor submitted a report to City Council wherein she underscored the fact that the Corporation “is insolvent” (the “Valuation”); and

WHEREAS, according to the Valuation, the status and reported market value of the properties purportedly acquired with the Loan Proceeds (the “Acquired Properties”) suggest i) the Corporation has withheld approximately \$350,000 in property sales proceeds from the City; ii) there is more than \$1.9 Million in lost value associated with the Acquired Properties; and iii) property valued at approximately \$1.2 Million as of the date of the Loan Agreement cannot be valued at this time; and

WHEREAS, the Mayor has effectively assumed management of the Corporation and has, according to the City Auditor in correspondence attached hereto as Exhibit “B”, named the City’s Real Estate and Housing Director, Bob Weir, Executive Director of the Corporation and has stated that the Corporation’s debt to the City is uncollectible; and

WHEREAS, if the Mayor's increased control over the Corporation causes the Corporation to be deemed a component unit of the City, the City will become financially accountable for the liabilities of the Corporation; and

WHEREAS, there has been no clear accounting as to the use and status of the Loan Proceeds or the Corporation's ability to repay the City; and

WHEREAS, City Council deems it necessary and appropriate to fully understand the financial position of the Corporation and the disposition of the Loan Proceeds in order for City government to make prudent business decisions with regard to the City's control over and/or partnership with the Corporation; and

WHEREAS, pursuant to Section 2.5(a) of the Loan Agreement, the Corporation agreed to furnish and make open to inspection by the City, and its accountants or other agents, all pertinent financial books, documents and vouchers relating to its business, affairs and properties; and

WHEREAS, the City Treasurer, has attempted repeatedly to avoid unnecessary loss to the City associated with the Note including attempts to recover monies owed, as evidenced in the Default Notice attached hereto as Exhibit "C", in addition to expressing a need for an independent and forensic audit of the Corporation; and

WHEREAS, this Council deems it necessary and appropriate to direct the Auditing Department to exercise Section 2.5(a) of the Loan Agreement so as to, at minimum, discern, with reasonable assurance, the disposition of the Loan Proceeds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that this Council directs the Auditing Department, in cooperation with a firm of certified public accountants, to exercise the City's rights under Section 2.5(a) of the

Loan Agreement and to cause to be conducted a forensic audit of the Corporation, specifically regarding the disposition of the \$3,378,371.67 in Loan Proceeds.

BE IT FURTHER RESOLVED that the Auditing Department is directed to engage a firm of certified public accountants and to provide City Council with an executed engagement letter no later than thirty (30) days following the passing of this Resolution and to cause the engagement to complete no later than ninety (90) days following commencement of the audit engagement.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution directs the City Auditor to initiate a forensic audit of the Wilmington Housing Partnership Corporation as provided for under Section 2.5(a) of the Loan Agreement between the City and the Corporation, specifically as it relates to the Loan Proceeds in the amount of \$3,378,371.67.

EXHIBIT A

LOAN AGREEMENT

between

WILMINGTON HOUSING PARTNERSHIP CORPORATION,
Debtor

and

CITY OF WILMINGTON, DELAWARE,
Lender

Dated September 29, 2016

LOAN AGREEMENT

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EXHIBIT A — Wilmington Housing Partnership Corporation, Promissory Note, Series 2016

EXHIBIT B — Schedule of Housing Properties; Sale Proceeds; Sale Proceeds Used for Payment
of 2016 Bond; and Schedule Funding Date

LOAN AGREEMENT

This is a LOAN AGREEMENT, dated September 29, 2016 (herein referred to as the or this "Loan Agreement"), between WILMINGTON HOUSING PARTNERSHIP CORPORATION, a Delaware non-stock corporation (the "Corporation"), as Debtor, and THE CITY OF WILMINGTON, DELAWARE (the "City"), a political subdivision of the State of Delaware, as Lender.

PRELIMINARY STATEMENT

The Corporation desires to (a) refinance the costs of the acquisition, construction, renovation, improvement and equipping of certain housing developments located in the City (the "Housing Properties", as more fully defined in Section 3.1 hereof) by providing for the payment of the City's General Obligation Bond (Wilmington Housing Project, Series 2013 (Federally Taxable) (the "2013 Bond"), and (b) pay certain costs relating to the issuance of the 2016 Bond (hereinafter defined). In order to accomplish the foregoing, the Corporation is borrowing funds from the City through the issuance and sale to the City of the Corporation's Wilmington Housing Partnership Corporation Promissory Note, Series 2016, dated as of its date of delivery, in the principal amount of \$3,378,371.67 (the "2016 Note"), substantially in the form attached hereto as Exhibit "A".

The City is obtaining funds for such loan to the Corporation and the refunding of the 2013 Bond through the issuance and sale of its City of Wilmington, Delaware General Obligation Bond (Wilmington Housing Project), Series 2016 (Federally Taxable), in the maximum principal amount of \$3,378,371.67 (the "2016 Bond"), which will be issued pursuant to a Credit Agreement (the "Credit Agreement") between the City and JP Morgan Chase Bank, N.A., as purchaser of the 2016 Bond (the "Bond Purchaser"). The 2016 Bond will be a general obligation of the City secured by a pledge of the City's full faith, credit and taxing power.

The Corporation desires to secure the 2016 Note and its obligations hereunder by executing and delivering this Loan Agreement and has taken all action necessary therefor.

IN CONSIDERATION of the premises, the respective representations and agreements contained herein, the loan of all of the proceeds of the 2016 Bond by the City to the Corporation through purchase of the Note by the City with the proceeds of the 2016 Bond and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payments to be made by the Corporation on the Note, and any notes issued in substitution or exchange therefor, and on this Loan Agreement and the performance of all the covenants of the Corporation contained herein, the parties hereto hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1. Terms Defined.

The capitalized terms used in this Loan Agreement, unless the context requires otherwise or unless otherwise defined herein, shall have the same meanings as set forth in the Credit Agreement.

SECTION 1.2. Rules of Interpretation.

For all purposes of this Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) “This Loan Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) References in this instrument to masculine shall include the feminine and neuter and vice versa, and references herein to the singular shall include the plural and vice versa unless the context or use indicates otherwise.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles from time to time in effect.

(e) Any capitalized terms defined elsewhere in this Loan Agreement shall have the meanings therein prescribed for them.

(f) This Loan Agreement shall be interpreted and construed in accordance with the laws of the State of Delaware.

SECTION 1.3. Exhibits.

The following Exhibits are attached to and by reference made a part of this Loan Agreement:

- EXHIBIT A: Wilmington Housing Partnership Corporation Promissory Note, Series 2016.
- EXHIBIT B: Schedule of Housing Properties, Sale Proceeds; Sale Proceeds Used for Payment of 2016 Bond; and Scheduled Funding Date.

ARTICLE 2

GENERAL COVENANTS OF THE CORPORATION

SECTION 2.1. Representations and Warranties of the Corporation.

The Corporation represents and warrants as of the date of issuance of the 2016 Bond as follows:

(a) The Corporation has all corporate authority under the laws of Delaware and its Articles of Incorporation, as amended, and Bylaws, as amended, to create and issue the Note and to execute, deliver and perform this Loan Agreement, and all action on its part necessary for the valid creation and issuance of the Note and for the valid execution and delivery of this Loan Agreement has been duly and effectively taken, and this Loan Agreement and the Note in the hands of the holder thereof will be the legal, valid and binding obligations of the Corporation enforceable in accordance with their respective terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect, and to applicable equitable principles. The execution of this Loan Agreement and the 2016 Note has been duly authorized by the Corporation.

(b) The recitals of fact and statements contained in this Loan Agreement with respect to the Corporation are true in all material respects.

SECTION 2.2. Payment of Principal, Premium and Interest.

The Corporation will duly and punctually pay the principal of, premium, if any, and interest on the 2016 Note at the dates and the places and in the manner required in the 2016 Note and in this Loan Agreement. The Corporation will make such payments of the principal of, premium, if any, and interest on the Note to, or upon the order of, the City.

Notwithstanding any schedule of payments to be made upon the Note set forth herein or in the Note, the Corporation agrees to make payments upon the Note and to be liable therefor at times and in amounts allocable to the Corporation, to pay when due, that portion advanced to the Corporation by the City hereunder, all principal (whether at maturity, by mandatory redemption or acceleration), premium, if any, and interest on the 2016 Bond from time to time outstanding under the Credit Agreement.

SECTION 2.3. Maintenance of Corporate Existence and Tax Status.

The Corporation agrees that it will at all times maintain, subject to Section 2.4 hereof, its existence as a non-stock corporation organized under the laws of the State of Delaware, and that it will neither take or fail to take any action nor, to the extent within its control, suffer any action to be taken by others which will alter, change or destroy its status as a non-stock corporation.

The Corporation further covenants that none of its revenues, income or profits, whether realized or unrealized, will be distributed to any of its officers or trustees or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of

the Corporation, including but not limited to the Corporation's ability to pay to any person, association or corporation the reasonable value of any service performed for or product supplied to the Corporation by such person, association or corporation.

SECTION 2.4. Merger, Dissolution and Disposition of Property.

The Corporation covenants that it will maintain its corporate existence and will not dissolve or otherwise dispose of (in a single transaction or in a series of related transactions) all or a substantial part of its property and will not permit one or more other corporations to consolidate with or merge without the express written consent of the City.

SECTION 2.5. Financial Statements, Etc.

(a) The Corporation covenants that it will keep proper books of records and accounts in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Corporation. In addition, the Corporation will furnish to the City, as promptly as practicable, such information as the City may reasonably request concerning the Corporation in order to enable the City to determine whether the covenants, terms and provisions of this Loan Agreement have been complied with by the Corporation and for that purpose all pertinent financial books, documents and vouchers (other than personnel records and such other records which the Corporation is not permitted by law to disclose) relating to its business, affairs and properties shall at all reasonable times upon reasonable prior written notice be open to the inspection of accountants or other agents (who may make copies of all or any part thereof) who shall from time to time be designated and compensated by the City for such purpose.

The Corporation will provide to the City monthly reports (in form satisfactory to the City), setting forth the progress of the renovating or sale of any Housing Properties.

The foregoing provisions of this Section 2.5 notwithstanding, the Corporation is not obligated to keep its books of records and accounts in accordance with generally accepted accounting principles.

Without limiting the foregoing provisions of this Section 2.5, the Corporation will permit the City (or such persons as the City may designate) to visit and inspect, at the expense of the City, any of the properties of the Corporation and to discuss the affairs, finances and accounts of the Corporation with its officers and independent auditors or independent certified public accountants, all upon reasonable prior written notice and during regular business hours or at such other reasonable times as shall be agreed to by the City and the Corporation as often as the City may reasonably desire.

SECTION 2.6. Taxes, Charges and Assessments

To the extent that the Corporation or its properties are or become liable to taxation, the Corporation covenants and agrees to pay or cause to be paid (when the same shall become due or payable) all lawful taxes, charges, assessments and other governmental levies against the Corporation or its properties. If under applicable law any such tax, charge, fee, rate, imposition or assessment may at the option of the taxpayer be paid in installments, the Corporation may exercise such option.

Nothing contained in this Section 2.6 shall be deemed to constitute an admission by either the City or the Corporation that either the City or the Corporation is liable for any tax, charge, fee, rate, imposition or assessment.

SECTION 2.7. Compliance with Orders, Ordinances, Etc.

The Corporation will, at its sole cost and expense, comply with all applicable present and future laws, and all applicable present and future ordinances, orders, decrees, rules, regulations and requirements of which it has notice, of every duly constituted governmental entity, City, commission and court and the officers thereof of which it has notice, the failure to comply with which would materially and adversely affect the operations, properties or financial condition of the Corporation taken as a whole. The Corporation agrees to use all reasonable efforts to gain knowledge of such ordinances, orders, decrees, rules, regulations and requirements.

SECTION 2.8. Maintenance and Sale of Housing Properties.

The Corporation covenants (a) to preserve and keep its Housing Properties in material good repair and order and from time to time will make all repairs, replacements, renewals and additions deemed necessary by the Corporation for the efficient functioning of such properties and (b) to use its best efforts to sell the Housing Properties at prices at least equal to the amount shown in the column entitled "Sale Proceeds" in Exhibit "B" attached hereto.

SECTION 2.9. Insurance.

The Corporation agrees to maintain insurance coverage by reputable insurance companies or associations or self-insurance in such forms and amounts and against such hazards as are customary for institutions of similar size and scope of activities. The Corporation also agrees to list the City (City of Wilmington – Department of Real Estate and Housing) as an additional insured party on its insurance coverage.

SECTION 2.10. Rent and Other Charges.

Subject to any limitations imposed by law, the Corporation shall charge and collect rents and other charges, or shall sell properties which, together with any other moneys legally available to it, shall provide moneys sufficient at all times (a) to make the payments required by this Loan Agreement and to comply with this Loan Agreement in all other respects and (b) to satisfy all other obligations of the Corporation in a timely fashion.

SECTION 2.11. Notice Regarding Bankruptcy Petitions, Events of Default or Potential Default.

The Corporation agrees to notify the City in writing prior to any filing by it of a petition in bankruptcy and to notify the City immediately by telephone and in writing as soon as reasonably practicable when it obtains knowledge that a petition in bankruptcy has been filed against the Corporation or of an event of default or event which with the passage of time or giving of notice, or both, would constitute an event of default under this Loan Agreement.

SECTION 2.12. Security.

The Corporation's obligation to repay the Loan under this Loan Agreement and the 2016 Note will constitute a general obligation of the Corporation.

ARTICLE 3

THE FINANCING

SECTION 3.1. Loan of Proceeds of 2016 Bond.

(a) Refunding of 2013 Bond. The Corporation hereby agrees to issue and the City hereby agrees to purchase the 2016 Note as evidence of the loan by the City to the Corporation of all of the proceeds of the 2016 Bond. The proceeds of the 2016 Note shall be applied to refund the 2013 Bond and to pay the costs of issuing the 2016 Bond.

(b) Housing Properties. Attached hereto as Exhibit "B" is a table identifying all the Housing Properties owned by the Corporation and which were financed or refinanced by the proceeds of the 2013 Bond. The Corporation agrees that it will complete the renovation and improvement of all the Housing Properties. The Corporation represents that it has all the necessary funds and construction permits needed to complete such renovation and improvement.

The Corporation agrees to offer for sale, as soon as practicable, all the Housing Properties for prices that are expected to provide a net amount to the Corporation as appears under the column entitled "Sale Proceeds" in Exhibit "B". The Corporation expects those sales to be concluded by the dates as appears under the column entitled "Estimated Funding Date". A portion of the sale proceeds in the amount as appears in the column entitled "Sale Proceeds Used for Payment of 2016 Bond" will be promptly applied to the payment of the 2016 Bond. If a Housing Property is sold for an amount greater than the amount listed under "Sale Proceeds", the amount applied to the payment of the 2016 Bond will equal the actual sale proceeds multiplied by the percentage appearing in the last column in Exhibit "B". If a Housing Property is sold for less than the applicable Sale Proceeds, the amount of said proceeds to be applied to the payment of the 2016 Bond must not be less than the amount appearing under the column "Sales Proceeds Used for Payment of 2016 Bond".

Any Sale Proceeds which are not applied to the payment of the 2016 Bond as set forth above may be retained by the Corporation and used to pay operating expenses of the Corporation.

SECTION 3.2. Required Payments on 2016 Note.

Without limiting the generality of the covenants of the Corporation set forth in Section 3.1(b) hereof, the Corporation hereby agrees to make or cause to be made payments on the 2016 Note to the City in the amounts and at the times which will enable the City to make the corresponding payments on the 2016 Bond which the City owes to the Bond Purchaser. The Corporation acknowledges that it has received a copy of the 2016 Bond and the Credit Agreement, and that the City intends to rely on the Corporation to enable it to make all the payments on the 2016 Bond, and to comply with all the requirements under the Credit Agreement.

SECTION 3.3. Unconditional Obligation.

The obligations of the Corporation to make payments or cause the same to be made under this Loan Agreement and the 2016 Note shall be complete and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or nonhappening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Corporation may otherwise have against the City or the Bond Purchaser for any cause whatsoever. Notwithstanding any provision of this Loan Agreement, the City shall not have any obligation to advance or expend funds under this Loan Agreement or the 2016 Note beyond the proceeds of the 2016 Bond available therefor.

This Loan Agreement, the 2016 Note and the obligations of the Corporation to make payments hereunder are general obligations of the Corporation payable from any available funds of the Corporation.

The Corporation agrees to cooperate with all reasonable requests of the City to enable the City to comply with their respective obligations under the 2016 Bond and the Credit Agreement.

SECTION 3.4. Indemnification of the City.

The Corporation agrees to indemnify and save harmless the City, and each person, if any, who controls either the City within the meaning of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or otherwise (an "Indemnified Party") against any and all losses, injuries, claims, damages or injuries to persons or property, demands and expenses, including reasonable legal fees and reasonable expenses, of whatsoever kind and nature and by whomsoever made arising from or in any manner directly or indirectly growing out of (a) the use or nonuse of the Housing Properties, or any equipment or facilities used in connection therewith by anyone whomsoever, (b) any repairs, restoration, replacements, alterations or remodeling of or to the Housing Properties, or any equipment or facilities used in connection therewith, (c) the condition of the Housing Properties, and any equipment or facilities at any time used in connection therewith, and (d) any statement of fact or information provided

to the Bond Purchaser, that is untrue or incorrect in any material respect, and any omission of any statement of fact or information which should be contained therein for the purpose for which the same is to be used or which is necessary to make the statements provided misleading in any material respect.

The rights provided in this Section do not constitute an election of remedies or waiver of any rights which may be available to an Indemnified Party other than as provided herein, should the provisions of this Section or any portion hereof be found, by a court of competent jurisdiction, to be unenforceable, void or unavailable for any reason.

The obligations of the Corporation under this Section 3.4 shall survive any assignment or termination of this Loan Agreement.

ARTICLE 4

PREPAYMENT OF NOTE

SECTION 4.1. Prepayment Generally.

(a) *General.* The Corporation shall be obligated to prepay the 2016 Note from the proceeds of the sale of Housing Properties as provided in Section 3.1(b) in order to provide funds for the mandatory redemption of the 2016 Bond.

SECTION 4.2. Obligation to Prepay.

The Corporation covenants and agrees that if all or any part of the 2016 Bond is called for redemption in accordance with the Credit Agreement or becomes subject to mandatory redemption, it will prepay the indebtedness hereunder in whole or in part in an amount sufficient to pay the amounts owed by the Corporation to allow the City to redeem the 2016 Bond on the date fixed for the redemption of the 2016 Bond.

SECTION 4.3. Cancellation at Expiration of Term of Loan Agreement.

At the expiration of the term of this Loan Agreement and following full payment of the 2016 Bond or provision for payment thereof and of all fees and charges having been made in accordance with the provisions of this Loan Agreement, the City shall deliver to the Corporation any documents and take such actions as may be necessary to effectuate the cancellation and evidence the termination of this Loan Agreement and the Note.

ARTICLE 5

EVENTS OF DEFAULT AND REMEDIES THEREFOR

SECTION 5.1. Events of Default.

The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(a) failure of the Corporation to pay an installment of interest on or principal of, or premium, if any, on the Note when the same shall become due and payable, whether at maturity or upon any date fixed for prepayment or by acceleration or otherwise; or

(b) failure of the Corporation to perform any covenant, condition or provision hereof and to remedy such default within 30 days after written notice thereof from the City, unless the nature of the default is such that it cannot be remedied within the thirty-day period and the Corporation has instituted corrective action within a period of time reasonably agreed to by the City and diligently pursues such action until the default is remedied; or

(c) any representation or warranty made by the Corporation in any statement or certificate furnished to the City or the purchaser of the 2016 Bond in connection with the sale of the 2016 Bond or furnished by the Corporation pursuant hereto is found to have been untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within 30 days after written notice thereof to the Corporation by the City, unless the nature of the default is such that it cannot be remedied within the thirty-day period and the Corporation has instituted corrective action within a period of time reasonably agreed to by the City and diligently pursues such action until the default is remedied; or

(d) default in any payment of principal of or premium, if any, on, or interest on any other obligation of the Corporation for borrowed money in excess of \$250,000 continuing beyond the expiration of the applicable grace period, if any, provided for therein or in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created or secured, and continuing beyond the expiration of the applicable grace period, if any, provided for therein, which default shall result in or permit the declaring due and payable of such obligation for borrowed money in excess of \$250,000 prior to the date on which it would otherwise have become due and payable; provided, however, that if such default shall be remedied or cured by the Corporation or be waived by the holders of such obligation, and any such declaration be rescinded or annulled, then the event of default hereunder by reason thereof shall be deemed to have been thereupon cured; or

(e) any judgment, writ or warrant of attachment or of any similar process in an amount in excess of \$250,000 not covered by insurance shall be entered or filed against the Corporation or against any of its property and remains unvacated, unpaid, unbonded, uninsured, unstayed or uncontested in good faith for a period of 60 days; or

(f) the Corporation admits, in writing, insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or

consents to the appointment of a trustee or receiver for the Corporation, or for a substantial part of its property; or

(g) a trustee, custodian or receiver is appointed for the Corporation or its property and is not discharged within 60 days after such appointment; or

(h) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Corporation (other than bankruptcy proceedings instituted by the Corporation against third parties), and if instituted against the Corporation are allowed against the Corporation or are consented to or are not dismissed, stayed or otherwise nullified within 60 days after such institution.

SECTION 5.2. Remedies.

During the occurrence and continuance of any event of default referred to in Section 5.1 hereof, the City may pursue the following remedies, in addition to any other remedies provided for by law:

(a) *Acceleration of Maturity of the Note; Waiver of Event of Default and Rescission of Acceleration.* The City may by written notice to the Corporation, declare the principal of the Note (if not then due and payable) to be due and payable immediately, and upon any such declaration, the principal of the Note shall become and be immediately due and payable, anything in the Note or in this Loan Agreement contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Note shall have been so declared and become due and payable, all arrears of interest and of principal payable prior to such acceleration, if any, upon the Note and the reasonable expenses of the City shall be paid by the Corporation, and every other default in the observance or performance of any covenant, condition or agreement in the Note or in this Loan Agreement contained shall be made good, or be secured, to the satisfaction of the City, or provision deemed by the City to be adequate shall be made therefor, then and in every such case the City by written notice to the Corporation may, at its option, waive the event of default by reason of which the principal of the Note shall have been so declared and become due and payable, and may rescind and annul such declaration and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent event of default or impair any right consequent thereon.

(b) *Suits, Etc.* The City personally or by attorney, may, in its discretion, proceed to protect and enforce its rights by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained in the Note or in this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the City shall deem most effectual to protect and enforce any of its rights or duties hereunder.

(c) *Termination of Proceedings.* In case the City shall have proceeded to enforce any right under this Loan Agreement, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and the Corporation shall, subject to any determination in such proceeding, be

restored to their former positions and rights hereunder with respect to the property pledged and assigned hereunder, and all rights, remedies and powers of the City shall continue as if no such proceedings had been taken.

SECTION 5.3. Remedies Cumulative.

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 5.4. Delay or Omission Not a Waiver.

No delay or omission of the City to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Loan Agreement to the City may be exercised from time to time and as often as may be deemed expedient by the City.

SECTION 5.5. Waiver of Extension or Stay Laws.

To the extent permitted by law, the Corporation will not during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of any of the Housing Properties, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory, or otherwise, to redeem the property so sold or any part thereof; and the Corporation hereby expressly waives all benefits or advantages of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the City, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

SECTION 5.6. Remedies Subject to Provision of Law.

All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

SECTION 5.7. Application of Proceeds of Sale.

The proceeds or avails resulting from the exercise of any remedies pursuant to Section 5.2 hereof, together with any other sums which then may be held by the City under this Loan Agreement, whether under the provisions of this Article or otherwise, shall be applied as follows:

FIRST: To the payment of the costs and reasonable expenses of the exercise of such remedies, including fees and reasonable expenses of the City, its agents, attorneys and counsel, and the reasonable expenses of any judicial proceedings wherein the same may be made, and of all reasonable expenses, liabilities and advances made or incurred by the City as permitted by this Loan Agreement.

SECOND: To the payment of the whole amount then due, owing and unpaid upon the Note for principal, interest and premium, if any; and in case such proceeds shall be insufficient to pay in full the whole amount of interest so due, owing and unpaid upon the Note, then ratably according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, without preference or priority as between principal and interest or premium, such application to be made upon presentation of the Note and the notation thereon of the payment, if partially paid, or the surrender and cancellation thereof, if fully paid.

THIRD: To the payment of any other sums required to be paid by the Corporation pursuant to any provisions of this Loan Agreement or of the Note.

FOURTH: To the payment of the surplus, if any, to the Corporation, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as any court of competent jurisdiction may direct.

ARTICLE 6

MISCELLANEOUS PROVISIONS

SECTION 6.1. Agreement for Benefit of Parties Hereto.

Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto and the holder of the Note and their successors and assigns, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

SECTION 6.2. Severability.

In case any one or more of the provisions contained in this Loan Agreement or in the Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

SECTION 6.3. Addresses for Notices and Demands.

Except as otherwise provided herein, any notice to or demand upon the City may be served or presented, and such demand may be made, at the principal office of the City at the following address:

The City of Wilmington
800 N. French Street
Wilmington, Delaware 19801
Attn: City Treasurer
Telephone: (302) 576-2483
Telecopier: (302) 573-5568

Except as otherwise provided herein, any notice to or demand upon any of the parties listed below shall be deemed to have sufficiently been given or served for all purposes by being sent by registered or certified mail, postage prepaid, addressed to such parties at the following addresses:

| | |
|--------------|---|
| Corporation: | Wilmington Housing Partnership Corporation City/County Building 800 N. French Street Wilmington, DE 19801 Attn: Steven T. Martin, Executive Director Telephone: (302) 576-3004 Telecopier: (302) 571-4143 |
|--------------|---|

Any of the foregoing may, by notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

SECTION 6.4. Section and Article Headings.

Section and Article headings in this Loan Agreement are for convenience and shall not be used in interpreting this Loan Agreement.

SECTION 6.5. Successors and Assigns.

Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Corporation, or by or on behalf of the City, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

SECTION 6.6. Counterparts.

This Loan Agreement is being executed in a number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof, and all counterparts collectively are to be deemed one instrument.

SECTION 6.7. Governing Law.

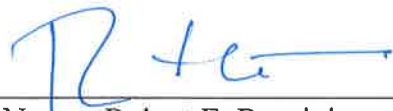
It is the intention of the parties hereto that this Loan Agreement and the rights and obligations of the parties hereunder and under the Note and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State of Delaware.

SECTION 6.8. Holidays.

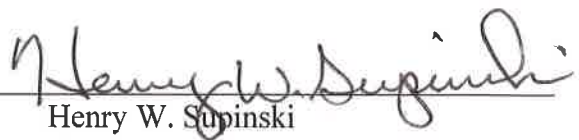
If any date for the payment of an amount hereunder or on the Note, or the taking of any other action required or permitted to be taken hereunder, is not a Business Day, then such payment shall be due, or such action shall or may be taken, as the case may be, on the first Business Day thereafter with the same force and effect as if done on the nominal date provided in this Loan Agreement.

IN WITNESS WHEREOF, the Corporation and the City have caused this Loan Agreement to be executed in their respective corporate names and the City has caused its seal to be hereunto affixed and attested by its City Clerk, all as of the date first above written.

**WILMINGTON HOUSING PARTNERSHIP
CORPORATION**

By: 
Name: Robert E. Buccini
Title: Chairman

CITY OF WILMINGTON, DELAWARE

By: 
Henry W. Supinski
City Treasurer

(SEAL)

Attest:

By: 
City Clerk

EXHIBIT A

FORM OF

WILMINGTON HOUSING PARTNERSHIP CORPORATION PROMISSORY NOTE, SERIES 2016

FOR VALUE RECEIVED, the undersigned, WILMINGTON HOUSING PARTNERSHIP CORPORATION, a Delaware non-stock corporation (the "Corporation"), hereby promises to pay to the order of the City of Wilmington, Delaware, a political subdivision of the State of Delaware (the "City"), the principal sum of _____ Million _____ Hundred Thousand Dollars (\$_____), and to pay interest on such unpaid principal balance hereof from the date of this Note at the rate or rates per annum prescribed for, and on or before each date that interest is due and payable on, the 2016 Bond (as hereinafter defined) until the principal amount hereof shall become due and payable. Reference is hereby made to the Loan Agreement for the definition of certain terms used herein and not otherwise defined.

This Note is issued under the Loan Agreement dated September __, 2016 (the "Loan Agreement"), between the Corporation and the City. It is intended and agreed by the Corporation that the payments of the principal hereof, premium, if any, and interest hereon will be sufficient to enable the City to pay when due, the principal (whether at maturity or upon redemption or acceleration) of, premium, if any, and interest on its \$_____ principal amount General Obligation Bond (Wilmington Housing Project), Series 2016 (Federally Taxable) (the "2016 Bond"), and accordingly the Corporation hereby agrees to make such payments hereon at such times. Reference is hereby made to the Loan Agreement for a description of the rights of the holder hereof, the Corporation and the City in respect thereof, to all of which the holder hereof, by its acceptance hereof, assents.

The principal of this Note is subject to prepayment by the Corporation from time to time, in the manner and under the circumstances referred to in the Loan Agreement, in whole or in part, at a price equal to 100% of the principal amount hereof to be prepaid plus accrued interest thereon to and including the date fixed for prepayment, together with any applicable premium.

In certain events and in the manner set forth in the Loan Agreement, the entire principal amount of this Note may be declared to be due and payable.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Note, or for any claim based thereon or on the Loan Agreement or any agreement supplemental thereto, against any trustee, officer, agent or employee, past, present or future, of the Corporation, or of any successor corporation, as such, either directly or through the Corporation or any such successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of trustees, officers, agents or employees, as such, being released as a condition of and consideration for the execution of the Loan Agreement and the issuance of this Note.

IN WITNESS WHEREOF, the Corporation has caused this Note to be duly executed.

Dated: September __, 2016.

**WILMINGTON HOUSING PARTNERSHIP
CORPORATION**

By: _____

Name: Robert E. Buccini

Title: Chairman

IN WITNESS WHEREOF, the Corporation has caused this Note to be duly executed.

Dated: September 29, 2016.

**WILMINGTON HOUSING PARTNERSHIP
CORPORATION**


By: 
Name: Robert E. Buccini
Title: Chairman

EXHIBIT B

Schedule of Housing Properties, Sales Proceeds, Sale Proceeds Used for Payment of 2016 Bond, Scheduled Funding Date

| Housing Properties | Number of Units | Sales Proceeds | Sale Proceeds used for Payment of 2016 Bond | Estimated Funding Date | |
|---------------------|-----------------|----------------|---|------------------------|-----|
| 513 Vandever Ave | 1 | 110,000.00 | 50,000.00 | 10/30/2016 | 45% |
| 1013 Coleman Street | 1 | 150,000.00 | 90,000.00 | 10/30/2016 | 60% |
| 907 Church St | 1 | 120,000.00 | 75,000.00 | 11/30/2016 | 63% |
| 607 Church St | 1 | 140,000.00 | 85,000.00 | 11/30/2016 | 61% |
| 703 Kirkwood | 1 | 120,000.00 | 50,000.00 | 1/30/2017 | 42% |
| 801 Bennett | 1 | 125,000.00 | 60,000.00 | 4/30/2017 | 48% |
| 523 Vandever | 1 | 145,000.00 | 85,000.00 | 8/30/2017 | 59% |
| 525 Vandever | 1 | 145,000.00 | 85,000.00 | 8/30/2017 | 59% |
| 527 Vandever | 1 | 145,000.00 | 85,000.00 | 8/30/2017 | 59% |
| 529 Vandever | 1 | 145,000.00 | 85,000.00 | 8/30/2017 | 59% |
| 4 7th Ave | 7 | 945,000.00 | 425,000.00 | 12/30/2017 | 45% |
| 817-831 Bennett | 4 | 500,000.00 | 260,000.00 | 3/30/2018 | 52% |
| 1400 Anchorage | 15 | 2,475,000.00 | 1,225,000.00 | 1/30/2018-5/30/2018 | 49% |
| 800 Block Bennett | 7 | 1,050,000.00 | 840,000.00 | 11/30/2017-1/30/2018 | 80% |
| | | 6,315,000.00 | 3,500,000.00 | | |

EXHIBIT B

Velda Jones-Potter

From: Terence J. Williams
Sent: Thursday, January 31, 2019 2:42 PM
To: Velda Jones-Potter
Cc: Michael S. Purzycki; Tanya Washington; John Rago; Robert L. Weir; Bob Williams; Bud Freel; Ciro Adams; Ernest Congo; Hanifa G. N. Shabazz; Loretta Walsh; Michelle H. Harlee; Robert A. Williams; Rysheema J. Dixon; Samuel L. Guy; Va'Shun A. Turner; Yolanda M. McCoy; Zanthia L. Oliver
Subject: RE: Wilmington Housing Partnership

Good afternoon Velda! Thanks again for the feedback. As I mentioned during our conversation, the WHP Agreed Upon Procedures Review was not an audit. There was a limited scope on this engagement which covered transactions that were processed for the WHP during the timeframe that was mentioned in the report. Our observations were based on information that was available to my team during fieldwork. The outstanding balance of \$158K was mentioned in the report because it was brought to our attention by the former WHP, Executive Director, Steve Martin during interviews.

Based on the Administration's WHP Press Release on Friday, January 18th, Bob Weir, Director, Real Estate & Housing is the new Executive Director of the WHP. To the best of my knowledge, Mr. Weir along with the Administration have begun taking steps to mitigate any concerns involving the Partnership. If you have further questions, please contact the Administration or Bob Weir surrounding the WHP.

Thanks and regards,

Terence J. Williams
City Auditor
City of Wilmington - Auditing Department
800 N. French St.
Wilmington, DE 19801
Office: (302) 576-2165
Fax: (302) 573-5644

tjwilliams@wilmingtonde.gov

From: Velda Jones-Potter
Sent: Wednesday, January 30, 2019 3:04 PM
To: Terence J. Williams <tjwilliams@wilmingtonde.gov>
Cc: Michael S. Purzycki <mspurzycki@wilmingtonde.gov>; Bob Williams <williams7thdistrict@gmail.com>; Bud Freel <budfreel@aol.com>; Ciro Adams <cadams@wilmingtonde.gov>; Ernest Congo <econgo@wilmingtonde.gov>; Hanifa G. N. Shabazz <hshabazz@wilmingtonde.gov>; Loretta Walsh <lwalsh@wilmingtonde.gov>; Michelle H. Harlee <mhhharlee@wilmingtonde.gov>; Robert A. Williams <rwilliams@wilmingtonde.gov>; Rysheema J. Dixon <rjdixon@wilmingtonde.gov>; Samuel L. Guy <slguy@wilmingtonde.gov>; Va'Shun A. Turner <vturner@wilmingtonde.gov>; Yolanda M. McCoy <yymmccoy@wilmingtonde.gov>; Zanthia L. Oliver <zloliver@wilmingtonde.gov>
Subject: RE: Wilmington Housing Partnership

Good afternoon Terence,

I appreciate your response. My aim is to ensure the Administration and Council are aware and the City's \$3.4 million liability is addressed among whatever actions are taken regarding WHP and disposal of its assets.

Your Audit Report cites loans outstanding of \$158k which makes no mention of the \$3.4million obligation. It further recommends WHP property sale proceeds be used for "operational costs" without regard to WHP's loan covenant with the City that stipulates sale proceeds repay the principal balance. Whether or not interest payments were missed, should the City not have cause for concern regarding this exposure given WHP's current financial condition?

Velda

From: Terence J. Williams

Sent: Monday, January 28, 2019 9:28 AM

To: Velda Jones-Potter

Cc: Michael S. Purzycki; Bob Williams; Bud Freel; Ciro Adams; Ernest Congo; Hanifa G. N. Shabazz; Loretta Walsh; Michelle H. Harlee; Robert A. Williams; Rysheema J. Dixon; Samuel L. Guy; Va'Shun A. Turner; Yolanda M. McCoy; Zanthia L. Oliver

Subject: RE: Wilmington Housing Partnership

Good morning Velda! Thanks for the update. This wasn't in our report because fieldwork was finished a couple of months prior to the missed quarterly interest payment and a draft report was already being reviewed by the Administration. If you have any questions, don't hesitate to give me a call, at your earliest convenience.

Best regards,

Terence J. Williams

City Auditor

City of Wilmington - Auditing Department

800 N. French St.

Wilmington, DE 19801

Office: (302) 576-2165

Fax: (302) 573-5644

tjwilliams@wilmingtonde.gov

From: Velda Jones-Potter

Sent: Friday, January 25, 2019 4:44 PM

To: Terence J. Williams <tjwilliams@wilmingtonde.gov>

Cc: Michael S. Purzycki <mspurzycki@wilmingtonde.gov>; Bob Williams <williams7thdistrict@gmail.com>; Bud Freel <budfreel@aol.com>; Ciro Adams <cadams@wilmingtonde.gov>; Ernest Congo <econgo@wilmingtonde.gov>; Hanifa G. N. Shabazz <hshabazz@wilmingtonde.gov>; Loretta Walsh <lwalsh@wilmingtonde.gov>; Michelle H. Harlee <mhharlee@wilmingtonde.gov>; Robert A. Williams <rwilliams@wilmingtonde.gov>; Rysheema J. Dixon <rjdixon@wilmingtonde.gov>; Samuel L. Guy <slguy@wilmingtonde.gov>; Va'Shun A. Turner <vturner@wilmingtonde.gov>; Yolanda M. McCoy <ymmccoy@wilmingtonde.gov>; Zanthia L. Oliver <zloliver@wilmingtonde.gov>

Subject: Wilmington Housing Partnership

****Correction to Memo****

Terence,

Please see the attached correspondence initially addressed to the Mayor and Members of City Council; now corrected to include you as it references the 'Report on the City's Audit of WHP'.
Pardon my oversight.

Thanks,

Velda

Velda Jones-Potter | City Treasurer

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

Phone: 302-576-2480

Email: treasurer@wilmingtonde.gov

EXHIBIT C

City of Wilmington
Delaware

Administrative Division

Velda Jones-Potter
City Treasurer

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



April 8, 2019

Via Certified Mail

Robert Weir, President
Wilmington Housing Partnership Corporation
Wilmington, DE 19801

Re: \$3,378,371.67 loan (the "Loan") from the City of Wilmington (the "City") to Wilmington Housing Partnership Corporation (the "Corporation") made on September 29, 2016 as evidenced by (i) that certain Loan Agreement dated September 29, 2016 (the "Loan Agreement") and (ii) that certain Promissory Note dated September 29, 2016 (the "2016 Note")

Dear Mr. Weir:

All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Please be advised that an Event of Default has occurred under the 2016 Loan Agreement because the Corporation failed to make interest payments on the 2016 Note on July 2, 2018, October 1, 2018 and December 31, 2018 as required by Section 2.2 of the Loan Agreement and such failure remains uncured as of the date of this letter.

Full payment of the Loan is due immediately, and a continued failure to pay the Loan in full may cause the City to exercise its right to pursue additional remedies up to and including suits in equity or at law pursuant to Section 5.2(b) of the Loan Agreement. In addition to the outstanding unpaid principal balance, the Corporation is responsible to reimburse the City for interest payments made by the City to the Bond Purchaser, as of the date of this letter, in an aggregate amount of **Eighty-Seven Thousand Four Hundred Twenty-One Dollars and 24/100 (\$87,421.24)**, and the loan will continue to accrue interest at a rate indexed to 30-day LIBOR plus 95 basis points. Our records indicate that the outstanding balance of the Loan as of the date of this letter is **Three Million Four Hundred Sixty-Five Thousand Seven Hundred Ninety-Two Dollars and 91/100 (\$3,465,792.91)**, which reflects the outstanding unpaid principal balance and aforementioned interest reimbursement.

Mr. Robert Weir
April 8, 2019
Page 2

Please contact Kalief Cole as soon as possible regarding when the City can expect payment on the Loan. Mr. Cole can be reached at (302) 576-2484

Thank you for your attention to this matter.

Sincerely,



Velda Jones-Potter
Wilmington City Treasurer

cc: Tom Esposito, Treasurer, Wilmington Housing Partnership

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IMPORTANT: Save this receipt for your records.

PS Form 3800, April 2015 (Reverse) PSN 7530-02-000-9047

USPS TRACKING #



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