

Wilmington, Delaware
_____, 2022

#0000

Sponsor:

**Council
Member
Harlee**

WHEREAS, City Charter Section 1-101 provides that the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

WHEREAS, City Charter Section 2-621(a) provides that City Council shall by resolution declare a property approved for disposition and authorize the conduct of disposition proceedings by the Department of Real Estate and Housing; and

WHEREAS, City Charter Section 2-621(c) provides that non-profit organizations are exempt from the City's bid procedures and that upon the declaration of a property approved for disposition by resolution of City Council, the Department of Real Estate may negotiate an agreement of sale, lease, exchange, or other transfer of such property owned by the City to any such non-profit organization; and

WHEREAS, City Charter Section 8-204 provides that the City may accept the conveyance of an interest in real estate with the approval of City Council, and an easement is an interest in real estate; and

WHEREAS, the City currently owns the parcel of real estate located at 105 South Market Street, Wilmington, Delaware, being New Castle County Tax Parcel ID No. 26-043.00-009 (the "Property"); and

WHEREAS, because the Property is an essential and necessary component of the proposed "South Market Street Development Project" located within the 86-acre "Riverfront East" concerning which the City has a longstanding partnership with the Riverfront Development Corporation to develop and improve the area for the benefit of the City and its residents; and

WHEREAS, the Property will be used for a public roadway and riverwalk; and

WHEREAS, the Riverfront Development Corporation (“RDC”) is a non-profit corporation to which the Department of Real Estate may lawfully convey title of the Property; and

WHEREAS, City Council finds it is desirable and beneficial to the City to further the South Market Street Development Plan by conveying the Property to the RDC ; and

WHEREAS, City Council similarly finds it desirable and beneficial to the City to receive certain easements in the Property in order to have access to maintain, repair, and replace utilities when the Property is conveyed to the RDC; and

WHEREAS, based upon the recommendation of the Department of Real Estate and Housing, City Council wishes to declare the Property surplus and available for disposition; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby declares the Property to be surplus and approves it for disposition to the RDC pursuant to the proposed Agreement of Sale (Exhibit A) and similarly approves the City’s acceptance of all necessary and appropriate easements in the Property (See Exhibit B); and

BE IT FURTHER RESOLVED that Council hereby authorizes the Mayor or such other designee or authorized Department Head to execute all documents necessary to effectuate the dispositional proceedings for the Property and the acceptance of all necessary easements in the Property, including any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution declares 105 South Market Street, Wilmington, Delaware (Tax Parcel ID No. 26-043.00-009) to be surplus and approves the property for disposition to the Riverfront Development Corporation as well as the acceptance by the City of certain utility easements to maintain access to the property.

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EXHIBIT A

AGREEMENT TO CONVEY LAND

THIS AGREEMENT TO CONVEY LAND (the "**Agreement**") made this _____ day of _____, 2021 between Riverfront Development Corporation of Delaware ("**RDC**") and the City of Wilmington ("**City**") (collectively, the "**Parties**").

- A. **WHEREAS**, the City is the owner of certain property which is known as 105 South Market Street (Tax Parcel Number 26-043.00-009), consisting of approximately 0.68 acres more or less, as described in the property description attached as Exhibit A and incorporated by reference (the "**Property**"); and
- B. **WHEREAS**, the Property is an essential component of the proposed "South Market Street Development Project" and the City is willing to convey the Property to RDC for that purpose; and
- C. **WHEREAS**, the City requires that it have access to the Property for the purposes of maintaining, repairing and replacing utilities located on the Property.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties as set forth herein, the City does hereby agree to convey to RDC that certain lot parcel of land described in Exhibit A (Tax Parcel Number 26-043.00-009) located in New Castle County, City of Wilmington, Delaware.

- 1. **INCORPORATION BY REFERENCE**. Recitals A through C are incorporated by reference and made part of this Agreement.
- 2. **SPECIAL CONDITIONS**. Conveyance of the Property shall be subject to a Repair, Maintenance and Easement Agreement of any City utilities located on the Property in the form attached as Exhibit B (the "**Easement Agreement**"). RDC agrees to enter into and record the Easement Agreement immediately following closing. RDC also agrees to cooperate with all other service providers presently utilizing the City Property and enter into such agreements as may be necessary to allow for continuing service in order to meet the needs of the various service providers in a manner consistent with the "South Market Street Development Project".
- 3. **TRANSFER TAXES, PRO-RATED CHARGES**. Parties understand that there are no transfer taxes or any other lienable charges applicable to this transaction.
- 4. **TITLE**. Title shall be conveyed to RDC by special warranty deed.
- 5. **NO REPRESENTATIONS, ENTIRE AGREEMENT**. RDC has agreed to acquire the Property "as-is" in its condition on the date of this Agreement. Both RDC and the City have read and fully understand this Agreement, state that it contains the entire Agreement between them, and that they do not rely on any written or oral representation or statement not expressly written in this Agreement. This Agreement and the documents which it references constitutes the entire agreement between the Parties and any prior

understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

6. **NO RECORDING**. This Agreement shall not be recorded in the office of any recorder or any other office or place of public record. If RDC shall record this Agreement, or cause or permit it to be recorded, the City may, at the City's option, treat such act as a breach of this Agreement.
7. **NOTICES**. Any notice to the City shall be addressed to:

City of Wilmington
Department of Public Works
Louis L. Redding City/County Building
800 North French Street, 6th Floor
Wilmington, DE 19801
Attention: _____

With a copy to:

City of Wilmington
Law Department
Louis L. Redding City/County Building
800 North French Street, 9th Floor
Wilmington, DE 19801
Attention: Robert M. Goff, Jr., City Solicitor

Any notice to RDC hereunder shall be addressed to:

Riverfront Development Corporation of Delaware
Chase Center
815 Justison Street
Wilmington, DE 19801
Attention: Megan M. McGlinchey, Executive Director

With a copy to:

Monzack Mersky and Browder
1201 North Orange Street, Suite 400
Wilmington, DE 19801
Attention: Melvyn I. Monzack, Esquire

All notices shall be in writing, shall be delivered by receipted hand delivery or by overnight mail, and shall be effective when delivered.

8. **MISCELLANEOUS**. Delaware law governs this Agreement. The paragraph captions of this Agreement are inserted for reference only and are not intended to limit or enlarge the substance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written above.

Witnessed by:

**Riverfront Development Corporation
of Delaware**

By: _____ **(SEAL)**
Megan M. McGlinchey
Executive Director

City of Wilmington

By: _____ **(SEAL)**
[person]
[title]

Exhibit B
Repair, Maintenance and Easement Agreement

Tax Parcel No.: Tax Parcel 26-043.00-009

Prepared by/Return to:
Monzack Mersky and Browder, P.A.
1201 North Orange Street, Suite 400
Wilmington, DE 19801

REPAIR, MAINTENANCE AND EASEMENT AGREEMENT

THIS REPAIR, MAINTENANCE AND EASEMENT AGREEMENT (“Agreement”)
is made effective this ____ day of _____, 2021, by and between **RIVERFRONT
DEVELOPMENT CORPORATION OF DELAWARE**, a Delaware Corporation, (“**RDC**” or
“**Grantor**”) and the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware
(the “**City**” or “**Grantee**”).

RECITALS

- A. **WHEREAS**, RDC has obtained certain property from the City containing approximately 0.68 acres, more or less, located at 105 South Market Street, Wilmington, Delaware (hereinafter, the “**Property**” or the “**Servient Estate**”) as described on Exhibit A attached; and
- B. **WHEREAS**, a portion of the Property provides access for utilities and sewer lines (collectively, the “**Facilities**”) critical to the City and, as a condition of conveyance of the Property from the City to RDC, RDC has agreed to provide access for

maintenance, repair and replacement of many of the Facilities located on the Property.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of \$1.00, and the mutual covenants, terms and conditions, and restrictions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee (hereinafter, collectively the “**Parties**”) hereby covenant and agree as follows:

1. **Incorporation by Reference**. The Parties acknowledge and agree that Recitals A and B are incorporated by reference and made a part of this Agreement.

2. **Grant of Easement**. Grantor does hereby grant to Grantee a perpetual non-exclusive easement for pedestrian and vehicular ingress, egress and regress by Grantee and its successors and assigns, and its employees, contractors, agents, invitees and visitors in, to, upon and over the Servient Estate, in the shaded area shown on Exhibit B attached to this Agreement and incorporated by reference, solely for the purpose of accessing, maintaining, repairing and replacing the Facilities (the “**Easement**”). Grantor acknowledges and agrees that it will cooperate with all service providers as requested by the City, presently utilizing the Property and enter into such agreements as may be necessary to allow for continuing service in order to meet the needs of the various service providers.

3. **Quiet Enjoyment.** Grantee shall endeavor to minimize its access to the Servient Estate to provide maintenance and repair services, and shall endeavor to avoid any waste or nuisance upon the Servient Estate, or to engage in any other act or thing, which may disturb the quiet enjoyment of the owner of the Property.

4. **Abandonment.** Should the Facilities ever be abandoned on the Property, this Agreement shall terminate, be null and void and will no longer encumber the Servient Estate from and after such date. "Abandonment" means the intentional relinquishment of the Easement in the Property by the Grantee-City by an express, written and official act of the City of Wilmington.

5. **Successors and Assigns.** The rights and covenants hereunder shall inure to the benefit of and the obligations imposed hereunder and shall bind Grantor and Grantee, their respective successors and assigns.

6. **Notices.** All notices required or desired to be given under this Agreement shall be in writing and either (a) hand-delivered, (b) sent via FedEx or similar overnight service, or (c) sent via electronic mail, so long as notice is also provided through either method (a) or (b) as herein described. All such notices shall be effective upon receipt and shall be addressed as follows:

If to GRANTOR: Riverfront Development Corporation of Delaware
Chase Center on the Riverfront
815 Justison Street
Wilmington, DE 19801
Telephone No.: 302-425-4890
Attn: Executive Director

If to GRANTEE: City of Wilmington
Commissioner of Public Works
Department of Public Works
800 North French Street
6th Floor
Wilmington, DE 19801
Telephone No.: 302-576-3081
Attn: Deputy Commissioner

And: City Solicitor of Wilmington
800 North French Street
9th Floor
Wilmington, DE 19801

Notices shall be effective when received or upon attempted delivery if receipt is refused, or, if sent by overnight courier service, deemed to be received (if not earlier actually received) two (2) business days after being provided to such overnight courier. However, Notice to the Grantee shall in no event be effective until provided to both the Commissioner of Public Works and the City Solicitor.

7. **Binding Covenant**. The Easement shall be a covenant running with the Property and shall bind the Parties hereto, and their respective successors and assigns. This Agreement shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

8. **Applicable Law**. This Easement shall be governed by the substantive laws of the State of Delaware without regard to its conflicts of laws principles; and except as otherwise

provided herein, the State and Federal courts in Delaware shall have exclusive jurisdiction over any proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement.

9. **Entire Agreement.** This Agreement constitutes the entire agreement by and among the undersigned, and each of them, and with respect to the subject matter of this Agreement, it supersedes any and all other agreements, understandings, negotiations or discussions, either oral or in writing, expressed or implied, concerning the subject matter herein among the Parties to the Agreement. This Easement may not be amended except by a written agreement executed by Grantor and Grantee.

10. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Easement, held invalid or unenforceable only in part or degree, shall remain in full force and effect to the extent not held invalid or unenforceable.

11. **Duty to Cooperate.** Each of the Parties agrees that it will promptly execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the said Parties have executed this Agreement under seal effective as of the day and year first above written.

RIVERFRONT DEVELOPMENT CORPORATION OF DELAWARE

_____ By: _____ (SEAL)
Witness Name: Megan M. McGlinchey
Title: Executive Director

STATE OF DELAWARE)
) SS
COUNTY OF NEW CASTLE)

On this ____ day of _____, 2021 personally came before me, the undersigned, a Notary Public for the State of Delaware; Megan M. McGlinchey, who, being by me duly sworn, did depose and say that she is the Executive Director of RIVERFRONT DEVELOPMENT CORPORATION OF DELAWARE, a Delaware Corporation, party to this Agreement, and acknowledged the same to be her act and deed and the act and deed of said corporation, and that her act of executing, and delivering this instrument was duly authorized by the corporation.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Notary Public
Name: _____
My Commission Expires

CITY OF WILMINGTON

_____ By: _____ (SEAL)
Witness Name:
Title:

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

On this ____ day of _____, 2021 personally came before me, the undersigned, a Notary Public for the State of Delaware; _____, who, being by me duly sworn, did depose and say that he/she is the _____ of the PUBLIC WORKS OF THE CITY OF WILMINGTON, a Delaware municipal corporation, party to this Agreement, and acknowledged the same to be his/her act and deed and the act and deed of said corporation, and that his/her act of executing, and delivering this instrument was duly authorized by the corporation.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Notary Public
Name: _____
My Commission Expires

EXHIBIT B

