

Wilmington, Delaware
September 15, 2022

#

Sponsor:

**Council
Member
Harlee**

WHEREAS, pursuant to City Charter Section 8-204, every department, board and commission may accept on behalf of the City a gift of an interest in real estate with authority from Council so to do; and

WHEREAS, the Riverfront Development Corporation of Delaware (“RDC”) is the owner of two properties located at 610 South Market Street (being Tax Parcel No. 26-057.00-005 and a yet-to-be-determined tax parcel number) (collectively, the “Properties”); and

WHEREAS, there is an existing drainage ditch located on a portion of the Properties that is essential to the stormwater management of the City (the “Ditch”); and

WHEREAS, RDC intends to install two underground reinforced concrete pipes within a portion of the Properties to carry stormwater flow through the Properties (collectively, the “Pipes”); and

WHEREAS, the City has agreed to be responsible for the repair, maintenance, and replacement of the Ditch and the Pipes (collectively, the “Maintenance”); and

WHEREAS, RDC would like to donate two easements to the City upon and over the Properties, as more particularly described on the agreements attached hereto and incorporated herein as Exhibit A, in order for the City to perform the Maintenance (the “Easements”); and

WHEREAS, the City would like to accept the donation of the Easements from RDC to perform the Maintenance; and

WHEREAS, City Council, upon the recommendation of the Department of Public Works, wishes to authorize the City to accept the donation of the Easements.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby authorizes the City to accept the donation of the Easements, as more particularly described in the agreements attached hereto and incorporated herein as Exhibit A, from the RDC.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is hereby authorized to execute any and all documents necessary to effectuate the donation of the Easements from the RDC to the City, including any and all further undertakings and assurances as may be appropriate.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution authorizes the City to accept the donation of two easements upon and over 610 South Market Street from the Riverfront Development Corporation of Delaware. The easements will enable the City's Department of Public Works to perform repair, maintenance, and replacement services for a drainage ditch and two reinforced concrete pipes that are essential for stormwater management in the City.

W0118534

EXHIBIT A

Tax Parcel Numbers: 26-057.00-005

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

LIMITED RIGHT-OF-ENTRY AGREEMENT

THIS LIMITED RIGHT-OF-ENTRY AGREEMENT (this “Limited Agreement”) is made and entered into this ____ day of _____, 20____, between Riverfront Development Corporation of Delaware, a Delaware corporation (“RDC”) and the City of Wilmington, a municipal corporation of the State of Delaware (the “City”).

RECITALS

- A. **WHEREAS**, RDC is the owner of certain properties known as Tax Parcel Number 26-057.00-005 and Tax Parcel Number _____ (to be determined), located at 610 South Market Street in the City of Wilmington, Delaware (the “Properties”); and
- B. **WHEREAS**, there is an existing drainage ditch located on Tax Parcel Number 26-057.00-005 which is essential to the stormwater management system of the City (the “Stormwater Management Facility”); and
- C. **WHEREAS**, RDC will be constructing additional Stormwater Management Facilities, including the installation of underground reinforced concrete pipes (the “Concrete Pipes”) within Tax Parcel 26-057.00-005; and
- D. **WHEREAS**, the City has agreed to be responsible for the repair, maintenance and replacement of the Stormwater Management Facility pursuant to a Repair, Maintenance and Easement Agreement in the form attached as Exhibit A; and
- E. **WHEREAS**, RDC intends to transfer Tax Parcel Number _____ (to be determined) to The Salvation Army, a New York corporation (“SA”), and to provide a blanket easement for the use of Tax Parcel Number 26-057.00-005 to SA (the “SA Easement”); and
- F. **WHEREAS**, RDC has agreed to provide this Limited Agreement to the City to be utilized solely for major repairs or replacement of the Concrete

Pipes. The area covered by this Limited Agreement is located on the east side of the underground Concrete Pipes to be constructed on Tax Parcel Number 26-057.00-005 and is fifteen feet (15ft) in width from the center line of the closest Concrete Pipe to Parcel _____ (to be determined). The easement area is as located and as shown on the attached Exhibit B, delineated in orange, attached hereto and incorporated by reference; and

- G. **WHEREAS**, the property located within the SA Easement over and above the Concrete Pipes will be utilized by SA for recreational purposes; and
- H. **WHEREAS**, RDC is providing this Limited Agreement to the City to permit access solely for purposes of replacement or major repair of the Concrete Pipes in order to minimize any disruption to the future use of the Properties.

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

1. Incorporation by Reference. Recitals A through H are incorporated by reference and made part of this Limited Agreement.
2. Right of Entry. The City is granted the right of access delineated in yellow on Exhibit B attached hereto and incorporated by reference herein solely for the purpose of making major repairs or replacements of the Concrete Pipes as depicted on Exhibit B (the "Right of Entry Area").
3. Damage – Restoration. In the event that entry or use by the City, its agents, successors or assigns, causes damage or harm to the Properties, the City shall immediately restore the Properties to their preexisting conditions.
4. Quiet Enjoyment. The City shall limit its access to the use of the Right of Entry Area only for purposes of providing major repairs or replacement of the Concrete Pipes when the easement area reflected on Exhibit B is not sufficient for such purposes.
5. Successors and Assigns. The rights and covenants hereunder shall inure to the benefit of and the obligations imposed hereunder and shall bind RDC and the City, and their respective successors and assigns.
6. Notices. All notices required or desired to be given under this Limited 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 RDC: 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 the City: 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 service. However, notice to the City is not effective until it is provided to both the Commissioner of Public Works and the City Solicitor.

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

8. Applicable Law. This Limited Agreement shall be governed by the substantive laws of the State of Delaware without regard to its conflicts of law 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 Limited Agreement.

9. Entire Agreement. This Limited Agreement constitutes the entire agreement by and among the undersigned, and each of them, and with respect to the subject matter of this Limited 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 Limited Agreement. This Limited Agreement may not be amended except by a written agreement executed by RDC and the

City or their successors or assigns. Notwithstanding the foregoing provisions of this section, the City shall have other access to the Properties as may be necessary to preform its duties and obligations pursuant to the provisions of the Repair, Maintenance and Easement Agreement (Exhibit A), in its final executed and recorded form. It is understood that this Agreement does not, in any manner, limit the rights of the City under the Repair, Maintenance and Easement Agreement.

10. Severability. If any provision of this Limited Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Limited Agreement shall remain in full force and effect. Any provision of this Limited Agreement 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 party 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 Limited Agreement.

12. Counterparts. This Limited 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 PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have hereto set their hands and seals, the date and year first aforesaid.

**RIVERFRONT DEVELOPMENT
CORPORATION OF DELAWARE**

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

STATE OF DELAWARE)
)
NEW CASTLE COUNTY) SS

On this ____ day of _____, 202__ 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 Limited 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

Witness By: _____ (SEAL)
Name:
Title:

STATE OF DELAWARE)
)
NEW CASTLE COUNTY) SS

On this ____ day of _____, 20__ 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 Limited 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 A
REPAIR, MAINTENANCE AND EASEMENT AGREEMENT

Tax Parcel No.: Tax Parcel _____

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 _____, 20__, 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**”); and

R E C I T A L S

- A. **WHEREAS**, RDC owns certain property containing approximately 0.45 acres,
more or less, located at 610 South Market Street, Wilmington, Delaware
(hereinafter, the “**Property**” or the “**Servient Estate**”); and
- B. **WHEREAS**, a portion of the Property currently contains a drainage ditch which
is a critical component of the regional stormwater conveyance system (the
“**Stormwater Conveyance**”); and

- C. **WHEREAS**, the Grantor is obligated, and intends, to convey stormwater runoff by installing two underground pipes (the “**Concrete Pipes**”) to carry the storm water flow though the Property; and
- D. **WHEREAS**, Grantor and Grantee wish to preserve and maintain the integrity and sustainability of the Stormwater Conveyance; and
- E. **WHEREAS**, the City has agreed to operate, maintain, repair and replace the Concrete Pipes as needed; and
- F. **WHEREAS**, the Property containing the Stormwater Conveyance is subject to a Long-Term Stewardship Plan (the “**LTS Plan**”) between RDC and the State of Delaware Department of Natural Resources and Environmental Control (“**DNREC**”); and
- G. **WHEREAS**, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, pursuant to the express terms and provisions contained herein, a non-exclusive easement for ingress, egress and regress by Grantee, its successors and assigns solely for purposes of accessing, maintaining, repairing and replacing the Stormwater Conveyance area shown on Exhibit A attached hereto and designated, “Proposed Maintenance and Repair Easement” (the “**Stormwater Conveyance Easement**”); and

H. **WHEREAS**, Grantor intends to grant to The Salvation Army, a New York Corporation, an easement for the primary use of the surface area of the Property together with the right to use up to two (2) feet of portions of the subsurface area for placing posts or supports for equipment installed by The Salvation Army on the Property, and

I. **WHEREAS**, the City further agrees to take actions necessary to maintain positive drainage through the Concrete Pipes including, pressure cleaning, CCTV Survey, excavating, grading, constructing, and earth moving to repair, rehabilitate or replace the Concrete Pipes on the Property. The City further agrees that it will comply with all DNREC requirements and specifically that if damage or other deficiencies are observed on or in the exposed culvert outlet or in the riprap outlet protection area, repair the deficiency in accordance with this approved O&M Plan within thirty (30) calendar days of the discovery. NOTIFY DNREC-RS PRIOR TO ANY REPAIRS THAT MAY INVOLVE DIGGING OR SOIL MOVEMENT AT DEPTHS GREATER THAN 2 FEET. All corrective actions should be documented in the Maintenance Summary Report attached as Exhibit B.

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-I 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, as shown on Exhibit A, solely for the purpose of accessing, maintaining, repairing and replacing the Storm Water Management Facility. Grantor acknowledges and agrees that, “There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities [at depths greater than 2 feet] on the Property [including any repair, renovation or demolition of the existing structures on the on the Property] without the prior written approval of DNREC-RS”.

3. **Quiet Enjoyment.** To the extent that is reasonable, the Grantee shall endeavor to minimize and avoid any waste or nuisance upon the Servient Estate, or to disturb the quiet enjoyment of the owner of the Property.

4. **Maintenance Areas.** The location of the Stormwater Management Facility, is delineated on Exhibit A.

5. **Abandonment.** Should the Stormwater Conveyance ever be abandoned, the Stormwater Conveyance Easement shall terminate, be null and void and will no longer

encumber the Servient Estate from and after such date. In any case, an abandonment shall not have occurred unless it is evidenced by the recorded release of the Grantee of the Stormwater Conveyance Easement.

6. **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.

7. **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 service. However, notice to the Grantee is not effective until it is provided to both the Commissioner of Public Works and the City Solicitor.

8. **Binding Covenant.** The Stormwater Conveyance 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.

9. **Applicable Law.** This Stormwater Conveyance 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.

10. **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 Stormwater Conveyance Easement may not be amended except by a written agreement executed by Grantor and Grantee.

11. **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 Stormwater Conveyance 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.

12. **No Dedication.** This Agreement shall not constitute a public dedication of any kind and shall not provide any rights whatsoever to third parties nor does this Agreement convey any property rights except as specifically provided in this Agreement.

13. **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.

14. **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**

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

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

On this ____ day of _____, 20__ 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 _____, 20__ 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 A

EXHIBIT B
Maintenance Summary Report

Maintenance Summary Report

Hessler Property Site
Wilmington, Delaware

DATE ____/____/____

Time: _____AM/PM

Operable Unit _____

Describe the maintenance or repair that was performed as a follow-up to LTS Inspection Recommendations. Include date that maintenance or repair was performed and company performing the work.

Observed Issue #1 to be Corrected: _____

Maintenance Performed to Correct Issue: _____

Observed Issue #2 to be Corrected: _____

Maintenance Performed to Correct Issue: _____

Observed Issue #3 to be Corrected: _____

Maintenance Performed to Correct Issue: _____

Post-Maintenance Inspection Performed By:

Print: _____ Signature: _____

Attach photos showing conditions after the maintenance or repair was completed. Date photos on back. Photos will be included in Inspection Reports for transmittal to DNREC SIRS.

EXHIBIT B

