

RES23-017

Wilmington, Delaware
April 6, 2023

#0290

Sponsor:

Council
Member
Oliver

WHEREAS, pursuant to City Charter Section 1-101, the City of Wilmington (the “City”) may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

WHEREAS, City Code Section 2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

WHEREAS, City Code Section 2-621(c) provides that non-profit corporations are exempt from the City’s bid procedures and that, upon the declaration of a property as approved for disposition by resolution of City Council, the Department of Real Estate and Housing may lease property owned by the City to a non-profit corporation; and

WHEREAS, the City is the owner of 1108 East Twelfth Street (being Tax Parcel No. 26-036.40-231), 1110 East Twelfth Street (being Tax Parcel No. 26-036.40-230), 1112 East Twelfth Street (being Tax Parcel No. 26-036.40-229), 1114 East Twelfth Street (being Tax Parcel No. 26-036.40-228), 1116 East Twelfth Street (being Tax Parcel No. 26-036.40-227), 1125 Brandywine Street (being Tax Parcel No. 26-036.40-225), and 1127 Brandywine Street (being Tax Parcel No. 26-036.40-226) (collectively, the “Properties”); and

WHEREAS, the Delaware Center for Horticulture, Inc. (“DCH”) is non-profit corporation that mobilizes and inspires community greening statewide in urban and suburban environments; and

WHEREAS, DCH has leased the Properties from the City for several years for use as a community garden for City residents, but DCH’s current lease has expired; and

WHEREAS, the City and DCH would like to enter into a new five-year lease for DCH to be able to continue to use the Properties for a community garden (the "Lease"), a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, City Council deems it necessary and appropriate to approve the grant of a leasehold interest to DCH for DCH to use the Properties for a community garden.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby approves the disposition of a leasehold interest in the Properties to DCH for use as a community garden pursuant to terms of the Lease, a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit A.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is hereby authorized to execute any and all documents necessary to effectuate the grant of a leasehold interest in the Properties to DCH, including, but not limited to, the Lease, and the appropriate officers of the City are hereby authorized to take any and all further undertakings and assurances that may be appropriate.

Passed by City Council,
April 6, 2023

ATTEST: Akira Menardo
Deputy City Clerk

SYNOPSIS: This Resolution approves the grant of a leasehold interest in 1108 East Twelfth Street, 1110 East Twelfth Street, 1112 East Twelfth Street, 1114 East Twelfth Street, 1116 East Twelfth Street, 1125 Brandywine Street, and 1127 Brandywine Street to the Delaware Center for Horticulture, Inc. for use as a community garden.

W0120290

EXHIBIT A

LEASE

(1108, 1110, 1112, 1114, and 1116 East Twelfth Street and 1125 and 1127 Brandywine Street)

THIS LEASE (this "Lease"), dated the ___ day of _____, 2023 (the "Effective Date"), is made by and between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware (the "City"), having an address of 800 N. French Street, Ninth Floor, Wilmington, Delaware 19801, Attn: City Solicitor, as landlord, and the **DELAWARE CENTER FOR HORTICULTURE, INC.** ("DCH"), a Delaware non-profit corporation, having an address of 1810 N. Dupont Street Wilmington, DE 19806, Attn: Executive Director, as tenant.

RECITALS:

WHEREAS, the City is the owner of those certain parcels of land and the improvements thereon known as 1108 East Twelfth Street (being Tax Parcel No. 26-036.40-231), 1110 East Twelfth Street (being Tax Parcel No. 26-036.40-230), 1112 East Twelfth Street (being Tax Parcel No. 26-036.40-229), 1114 East Twelfth Street (being Tax Parcel No. 26-036.40-228), 1116 East Twelfth Street (being Tax Parcel No. 26-036.40-227), 1125 Brandywine Street (being Tax Parcel No. 26-036.40-225), and 1127 Brandywine Street (being Tax Parcel No. 26-036.40-226), as illustrated on Exhibit "A", which is attached hereto and incorporated herein (collectively, the "Premises");

WHEREAS, DCH is non-profit corporation that mobilizes and inspires community greening statewide in urban and suburban environments;

WHEREAS, DCH would like to operate and maintain a community garden for City of Wilmington residents; and

WHEREAS, in light of the foregoing, the City desires to lease the Premises to DCH for DCH to operate and maintain a community garden under the terms and conditions of this Lease.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of DCH to be paid, kept and performed, the City has demised and leased and by these presents does demise and lease unto DCH, and DCH, does hereby take and hire from the City, for the term and subject to the covenants and conditions hereinafter expressed, the Premises, together with any and all improvements, appurtenances, rights, privileges, and easements benefitting, belonging, or pertaining thereto.

1. Recitals. The above recitals are incorporated herein and made a part hereof.
2. Definitions. As used in this Lease, the following terms shall have the meanings set forth below.
 - (a) "CGL" is defined in Section 7(a)(ii)(A) of this Lease.
 - (b) "City" has the meaning ascribed to such term in the first grammatical paragraph of this Lease.

(c) “Commencement Date” means the date that is the later of (i) the Effective Date or (ii) the date that the Wilmington City Council approves this Lease.

(d) “DCH” has the meaning ascribed to such term in the first grammatical paragraph of this Lease.

(e) “Effective Date” has the meaning ascribed to such term in the first grammatical paragraph of this Lease.

(f) “Event of Default” is defined in Section 16(a) of this Lease.

(g) “Expiration Date” is defined in Section 2 of this Lease.

(h) “Law(s)” means all present and future laws, statutes, codes, ordinances, orders, rules, and regulations of all federal, state, and local governments, agencies, and authorities having jurisdiction over the Premises.

(i) “Lease” has the meaning ascribed to such term in the first grammatical paragraph of this Lease.

(j) “Permitted Use” means the operation and maintenance of a community garden for residents of the City of Wilmington.

(k) “Premises” has the meaning ascribed to such term in the second grammatical paragraph of this Lease.

(l) “Term” is defined in Section 2 of this Lease.

2. Term. The term of this Lease (the “Term”) shall commence on the Commencement Date and shall expire on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (unless terminated sooner pursuant to Section 16 below, the “Expiration Date”).

3. Rent. On or prior to the Commencement Date, DCH shall pay to the City the sum of One Dollar (\$1.00) as the sole fixed rent amount payable under this Lease.

4. Grant of Lease. The City hereby grants to DCH a leasehold interest in the Premises for DCH to use the Premises solely for the Permitted Use during the Term. The City reserves the right to grant leasehold interests in all or part of the Premises to other persons during the Term that the City believes, in its sole discretion, will not interfere with DCH’s rights under this Lease. In the event that the City elects to enter into such leaseholds, then the parties shall enter into an amendment of this Lease that shall appropriately modify the definition of Premises. If the parties amend this Lease to reference any leasehold interests in the Premises provided by the City to other persons during the Term, any such amendment is hereby deemed approved by the Wilmington City Council and shall not require any additional councilmanic action or approval.

5. Taxes and Utility Expenses. During the Term of this Lease, DCH shall pay and discharge, or shall cause to be paid and discharged, as and when the same shall become due and

payable, to the extent legally assessed against the Premises, all real estate taxes, special and general assessments, utility charges (including, but not limited to, charges for electric, stormwater, sewer and water), and all other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary. The City, in its sole discretion, may elect to provide water services to the Premises free of charge for DCH to engage in the Permitted Use.

6. Maintenance and Repair. During the Term of this Lease, DCH shall, at its sole cost and expense, keep, or cause to be kept, the Premises in good order and repair and shall make all restorations and improvements necessary to maintain the Premises in a good, safe, and clean condition, including, but not limited to, the removal of all trash, garbage, rubbish, or refuse from the Premises. This Section 6 shall survive any revocation, termination, or expiration of this Lease.

7. Insurance and Indemnity.

(a) Insurance. DCH, at its sole cost and expense, for the mutual benefit of the City and DCH, shall at all times during the Term of this Lease, provide or confirm the procurement of workers' compensation, automobile, commercial general liability, and property damage liability insurance coverage for personal injury, sickness, disease, or death, or for damage or injury to or destruction of property (including the loss of the use thereof) occurring upon, in, or about the Premises or any improvements erected or constructed thereon, to wit:

(i) Workers' Compensation. DCH shall purchase and keep in force and effect workers' compensation insurance affording statutory coverage and containing statutory limits that will provide the applicable statutory benefits for employees of any employer who may or do suffer covered injuries or diseases while involved in the performance of their work at the Premises; and, even if permitted to do so by statute, DCH shall not reject any workers' compensation insurance option that, in the absence of such a rejection, would be applicable to any of the said employees.

(ii) Automobile and Commercial General Liability Insurance

(A) DCH shall purchase: (1) motor vehicle liability coverage with liability limits for bodily injury of at least \$1,000,000 with a combined single limit, and \$100,000 for property damage for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out of DCH's use of the Premises pursuant to this Lease, and (2) comprehensive commercial general liability ("CGL") insurance with limits of no less than \$1,000,000 per each occurrence and \$2,000,000 in the aggregate. The CGL policy shall be extended by endorsement or otherwise to also include coverage for contractual liability assumed by DCH with defense provided in addition to and separate from policy limits for indemnities of the named insured. The City of Wilmington shall be named as an additional insured on the motor vehicle liability coverages and CGL coverages. The CGL policy shall provide an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the City of Wilmington, its officials, or employees.

(iii) General Requirements for all Insurance

(A) All insurance required under this Lease, except workers' compensation, shall specifically name the City of Wilmington, its officials, and employees as additional insureds.

(B) Every insurance policy, to the extent obtainable, shall provide written notice of cancellation to the City of such policy.

(C) Each policy shall be written by a carrier licensed by the State of Delaware that has, and maintains during the term of the policy, at least an "A" rating from the A.M. Best Agency with "Stable" outlook. Any change in this rating or outlook must be disclosed to the City by DCH as soon as possible upon learning of the same.

(D) All insurance required under this Lease, except workers' compensation, shall expressly provide that such insurance shall be primary insurance.

(E) DCH shall procure and retain records including certificates of insurance evidencing the above-stated coverages and other requirements.

(b) Certificates of Insurance. DCH shall deliver to the City certificates of insurance evidencing the existence of all policies of insurance described above.

(c) Indemnification. DCH shall defend, indemnify, and hold the City and its officials and employees harmless from any and all claims, lawsuits, losses, liabilities, costs, or expenses, including reasonable attorneys' fees, arising out of or related to (i) any claim of bodily injury, property damage, or other damages on the Premises or (ii) the activities, improvements, and uses of the Premises contemplated by this Lease, except to the extent that such injury or damage results from the gross negligence or willful misconduct of the City or its officials or employees.

(d) DCH Release. The City shall not be liable or responsible for, and DCH hereby releases the City from any and all claims with respect to, any loss, damage, or injury to any property or person occasioned by (i) any condition, design, or defect in the Premises, (ii) DCH's use or alteration of any part of the Premises, or (iii) any other cause whatsoever related to the use or alteration of the Premises.

(e) Releases for Individuals Participating in the Permitted Use. DCH shall obtain executed releases, using the form attached as Exhibit B to this Lease, from any and all individuals that will participate in the Permitted Use on the Premises and deliver such releases to the City prior to any such individual entering the Premises to participate in the Permitted Use.

(f) Sections 7(c) and 7(d) shall survive any revocation, termination, or expiration of this Lease.

8. Assignment. Except as expressly permitted in the next succeeding sentence, DCH shall not assign this Lease or otherwise transfer DCH's interest in the Premises, or any portion thereof, to any person without obtaining, on each occasion, the express prior written consent of

City. The City acknowledges and agrees that DCH may allow City residents to use the community garden that DCH operates and maintains pursuant this Lease after each such resident executes the release required in Section 7(e) of this Lease, so long as DCH promptly delivers a copy of such executed release to the City.

9. Compliance with Applicable Laws. During the Term of this Lease, DCH shall, at its sole cost and expense, promptly observe and comply with all Laws applicable to the Premises.

10. Current Condition of Premises. DCH acknowledges that it has been afforded an opportunity to examine the Premises prior to the execution of this Lease, and the Premises is in good order, repair, and in a safe, clean condition.

11. Alterations. DCH shall make no alterations to the Premises or construct any building or make any other improvements on the Premises without the prior written consent of the City. Any and all alterations, changes, and/or improvements constructed or placed on the Premises by DCH shall, unless otherwise provided by written agreement between DCH and the City, be and become the property of the City and remain on the Premises at the expiration or earlier termination of this Lease.

12. Hazardous Materials. DCH shall not keep on the Premises, nor permit the use on the Premises of, any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered "hazardous", "extra hazardous", or an environmental contaminant by any responsible insurance company or any governmental or regulatory body.

13. Inspection of Premises. The City shall have the right at all reasonable times during the Term of this Lease to enter the Premises for the purpose of inspecting the Premises.

14. Surrender of Premises. Upon the expiration of the Term of this Lease, DCH shall surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and tear thereof and damages by the elements expected.

15. Quiet Enjoyment. DCH, upon paying the rent and all other sums and charges to be paid by it under this Lease, and observing and keeping all covenants, warranties, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease to the extent provided in this Lease.

16. Default and Termination Provisions.

(a) Default. The occurrence and continuance any one or more of the following events shall constitute an "Event of Default" under this Lease:

- (i) If DCH ceases to use the Premises as contemplated in this Lease; or
- (ii) If default shall be made in the due and punctual payment of any rent or any other monetary payments to be made by DCH to the City hereunder, when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after DCH's written notice thereof from the City to DCH; or

(iii) If default shall be made by DCH in the performance of or compliance with any of the covenants, agreements, terms, or conditions contained in this Lease and such default shall continue for a period of thirty (30) days after receipt of written notice specifying such default from the City to DCH; or, if it shall not be reasonably possible to cure such default within a period of thirty (30) days, then such longer period reasonably designated by the City in order to allow DCH to promptly remedy such default following DCH's receipt of the default notice.

(b) Termination for Default. If an Event of Default has occurred and continues beyond those periods of time herein granted to cure the same, then the City, in addition to any other remedies to which the City may be entitled at law or in equity, shall have the right to terminate this Lease by giving DCH a notice of termination, whereupon DCH's rights under this Lease shall terminate.

(c) Termination for Convenience. Upon 180 days' advance notice to DCH, the City may, in its sole discretion, terminate this Lease for its convenience.

17. Waiver of Trial by Jury. THE CITY AND DCH EACH AGREE TO AND THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LEASE, THE RELATIONSHIP OF THE CITY AND DCH, OR DCH'S USE OR OCCUPANCY OF THE PREMISES, AND ANY CLAIM OR INJURY OR DAMAGE AND/OR ANY STATUTORY REMEDY.

18. Casualty. In the event of any casualty causing damage to, or destruction of, the Premises, DCH shall promptly restore the Premises as nearly as practicable to its condition prior to such damage or destruction. All insurance proceeds received by the Premises shall be applied to the payment of restoration of the Premises. In no event shall the City have any obligation under this Lease to repair, restore, or rebuild the Premises.

19. Condemnation. If at any time during the Term of this Lease, title to the whole or any portion of the Premises shall be taken by exercise of the right of condemnation, eminent domain or by agreement between City and those authorized to exercise such right (all such proceedings being collectively referred to herein as a "taking"), this Lease shall terminate and expire on the date of such taking.

20. Notices. Every notice, approval, or consent required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid, by (a) United States registered or certified mail, return receipt requested, (b) hand delivery, or (c) overnight courier, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this paragraph. Notices shall be deemed given when so sent; but time periods for performance following notice shall run from the date the notice has been delivered or delivery is refused.

21. Governing Law. This Lease and the performance of all the terms and conditions contained herein shall be governed, interpreted, construed, and regulated by the laws of the State

of Delaware. All disputes in connection with this Lease shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware. The parties agree to submit exclusively to the jurisdiction and venue of said court.

22. Severability. Any provision of this Lease that may be determined by competent authority to be illegal, invalid, prohibited, or unenforceable shall be ineffective to the extent of such illegality, invalidity, prohibition, or unenforceability without invalidating the remaining terms and provisions hereof, and any such illegality, invalidity, prohibition, or unenforceability shall not invalidate or render unenforceable any of the remaining terms and provisions hereof.

23. Entire Agreement; Amendments. This Lease shall constitute the entire agreement between the parties with respect to the subject matter of this Lease. This Lease shall not be modified or changed except by a writing executed and delivered by both parties.

24. Counterparts. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

25. Parties. Except as herein otherwise expressly provided, the covenants, conditions, and agreements contained in this Lease shall bind, and inure to the benefit of, DCH and the City and their respective successors and permitted assigns.

26. No Partnership. It is understood and agreed that no party hereto shall be construed or held to be a partner, joint venturer, or associate of the other in the conduct of the other's business, nor shall either party be liable for any debts incurred by the other; but it is understood and agreed that the relationship is and at all times shall remain that of the City and DCH.

27. Headings; Pronouns. The headings of the sections of this Lease are for convenience only and have no meaning with respect to this Lease or the rights or obligations of the parties hereto. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: "person", as used herein, includes an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; "hereof", "herein", and "hereunder" and other words of similar import refer to this Lease as a whole; and "parties" means the City and DCH. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

28. Survival. All provisions of this Lease providing for indemnification or limitation of or protection against liability of either party and all other provisions hereof expressly stated to survive the termination of this Lease shall survive the termination, cancellation, or expiration of this Lease.

29. Computation of Time Periods. All periods of time referred to in this Lease shall include all Saturdays, Sundays and City, state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or holiday when City offices are closed, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or holiday when City offices are closed.

30. No Recordation of Lease. The City and DCH agree that neither this Lease nor any memorandum thereof shall be recorded.

31. Time of the Essence. TIME IS OF THE ESSENCE IN ALL PROVISIONS OF THIS LEASE.

32. Joint Participation in Drafting. This Lease was drafted with the joint participation of the parties and shall not be construed for or against either party.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

WITNESS:

CITY OF WILMINGTON

By: _____

Name: _____

Title: _____

Date: _____

WITNESS:

**DELAWARE CENTER FOR
HORTICULTURE, INC.**

By: _____

Vikram Krishnamurthy

Executive Director

Date: _____

W0119765

EXHIBIT A

PREMISES

Parcels Proposed for Lease to DCH

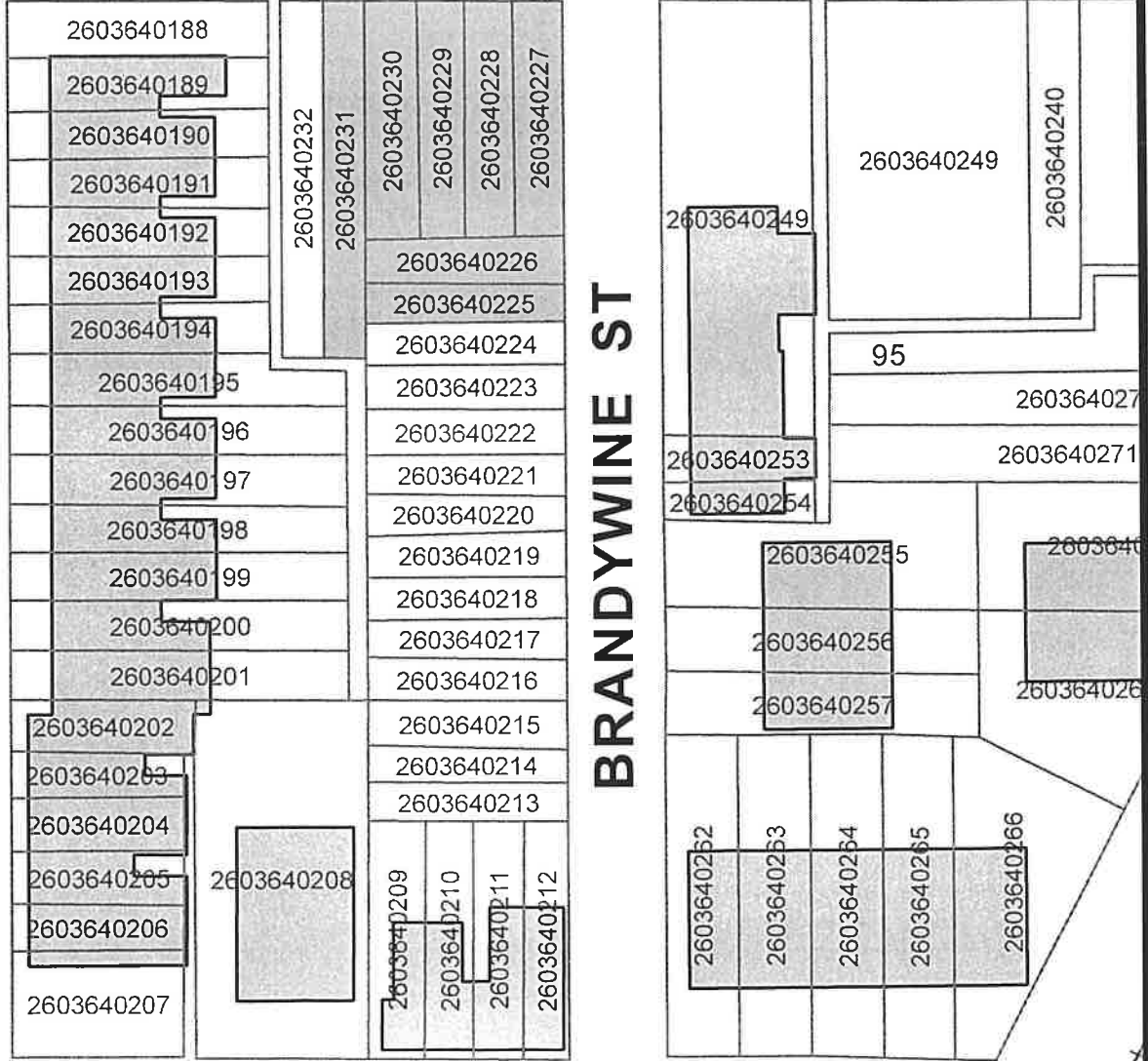
2603

 Parcels Proposed for Lease

E. 12TH ST

N. HEALD ST

BRANDYWINE ST



E. 11TH ST



MAR 2023



Feet

EXHIBIT B

RELEASE FOR COMMUNITY GARDEN PARTICIPANTS

RELEASE

The City of Wilmington (the "City") has agreed to allow _____
(print individual's name)

(the "Releasor") to enter onto the City's property located at 1108, 1110, 1112, 1114, and 1116 East Twelfth Street and 1125 and 1127 Brandywine Street, Wilmington, Delaware 19802 (collectively, the "Property") to participate in the community garden created by the Delaware Center for Horticulture on the Property.

In consideration for the City's agreement to allow the Releasor to use the Property, the Releasor, on behalf of himself/herself and his/her heirs, executors, representatives, administrators, successors, and assigns, hereby agrees to release the City and its officers, agents, and employees (collectively, the "Released Parties") from liability for any and all claims with respect to any loss, damage, or injury to any property or person occasioned by (i) any condition, design, or defect in the Property, (ii) the Releasor's use of the Property, and/or (iii) any other cause whatsoever related to the use of the Property regardless of whether the loss, damage, or injury may have been caused by the acts or omissions of the Released Parties.

THE RELEASOR HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS THAT IT RELEASES ANY AND ALL POTENTIAL CLAIMS THAT HE/SHE MIGHT HAVE AGAINST THE RELEASED PARTIES.

By: _____
(sign name)

Name: _____
(print name)

Date: _____
(print date)