

## **FORBEARANCE AGREEMENT**

This **FORBEARANCE AGREEMENT** (hereinafter referred to as the “Agreement”) is hereby made and entered into this [ ] day of [ ], 2020, by and between the **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utilities board of the State of Delaware (hereinafter referred to as the “BPW”), and [ ], each an individual resident of the State of Delaware (hereinafter referred to jointly as the “Owners”). BPW and Owners are hereinafter jointly referred to as the “Parties.”

### **BACKGROUND**

Owners are the record owners of that certain parcel or tract of land, with the improvements located thereon, located within the community of Savannah Place, commonly referred to as [ ] Savannah Circle, in the City of Lewes, Sussex County, and State of Delaware, identified on the tax maps of Sussex County, Delaware as Tax Parcel No. [ ] (hereinafter referred to as the “Property”). The BPW owns and operates utility systems throughout the City of Lewes and the BPW Service Area (hereinafter referred to as “the BPW System”).

The Owners have been assessed sewer impact fees in the amount of Twenty-Four Thousand Seven Hundred Ninety-Nine and 93/100 Dollars (\$24,799.93) (hereinafter referred to as the “Assessment”). The impact fees comprising the Assessment are typically due when invoiced; however, the BPW, during its regularly-scheduled meeting on May 27, 2020, has agreed to allow the Owners to make payments on the Assessment in installments. The BPW invoiced the Owners’ account, being further identified by Account Number [ ], on January 27, 2020 for the full amount of the Assessment (the “Invoice”). However, the BPW is agreeable to forbear from exercising certain of its rights and remedies against the Property, and to

allow the Assessment to be paid to the BPW by the Owners in accordance with the terms and conditions of this Agreement. Consistent with the powers of the BPW as granted pursuant to the BPW Charter (the “BPW Charter”), the BPW shall record a Notice of Lien related to the Assessment in the Office of the Recorder of Deeds, in and for Sussex County.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, stipulations, and agreements contained herein, along with other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assessment. The Owners acknowledge and confirm that they are responsible to pay the Assessment to the BPW, and that the Assessment has been levied in accordance with the BPW Charter.

2. Payment of Assessment.

a. Monthly Payments. The Assessment shall accrue interest at a rate of two percent (2%) per annum, and shall be amortized over thirty (30) years, payable in three hundred and sixty (360) monthly installments. The Owners shall continue to remit to the BPW a monthly payment of Ninety-one and 67/100 Dollars (\$91.67), having commenced on February [REDACTED], 2020, and continuing for thirty (30) years, with the final payment being due on February [REDACTED], 2050. The aggregate amount of such monthly payments shall be Thirty-Two Thousand Nine Hundred Ninety- Nine and 53/100 Dollars (\$32,999.53).

b. The Owners may, at any time, pay to the BPW the full amount owing on account of the Assessment, including any and all interest charged to the date of such payoff, late fees, and other charges, but without any prepayment penalty or

premium. The Owners may contact the BPW for a payoff amount with respect to the Assessment.

3. Forbearance. “Forbearance Period” shall mean the period commencing on the date hereof and ending on the date which is the earliest of: (1) the date on which an event of default (as defined in Section 5 of this Agreement) has occurred; or (2) the date on which a termination event (as defined in Section 7 of this Agreement) has occurred. During the Forbearance Period, the BPW agrees that it shall not exercise its available rights and remedies in collecting the Assessments, including, but not limited to, foreclosing on the Property or bringing a debt action to collect any and all amounts owed.

4. Acknowledgement of Lien. Subject to the terms and conditions of this Agreement, the Owners and the BPW acknowledge and confirm that the BPW has a valid, enforceable lien (the “Lien”) on the applicable Property, in accordance with Section 4.12 of the BPW Charter.

5. Default. Any failure by the Owners to remit a timely payment to the BPW or its designee in accordance with Section 2 of this Agreement shall constitute an event of default. Upon such event of default, the BPW’s obligations to forbear from exercising its rights and remedies shall cease. In the event that the BPW exercises its rights and remedies, the Owners shall reimburse the BPW for any costs or expenses, including, without limitation, reasonable attorneys’ fees, related thereto. Any decision by the BPW to delay exercising its rights and remedies to afford the Owners the time to cure such default, including the payment of any assessed late fees or other charges, shall not constitute a waiver of the BPW’s available rights and remedies. Following any such cure, all rights and remedies of the BPW under this Agreement shall be preserved.

6. Renewal of Lien. The Owners hereby agree that until the occurrence of a termination event as described in Section 7 of this Agreement, the BPW may file any necessary

Continuation of Lien or new Notice of Lien necessary to preserve the Lien, in accordance with applicable law. Any failure or delay of the BPW in filing any such Continuation of Lien or new Notice of Lien shall not relieve the Owners of their obligations under this Agreement and shall not constitute a waiver of the BPW's available rights and remedies.

7. Termination. This Agreement shall terminate by its terms upon payment of the full amount due and owing under the Lien, including any and all interest, late fees, and other charges.

8. Severability. If any part of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall continue in full force and effect.

9. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of Delaware.

10. Amendment. The Parties agree that this Agreement may not be modified, altered, amended, changed, or supplemented, in whole or in part, except by the written agreement of the Parties.

11. Assignment. The Owners may not assign this Agreement without the written consent of the BPW, which consent may be withheld or conditioned by the BPW in its sole discretion.

12. Counterparts. This Agreement may be executed in any number of counterparts.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Forbearance Agreement as of the date first above referenced.

**THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**

\_\_\_\_\_  
Witness/Attest

By: \_\_\_\_\_ (SEAL)  
Darrin E. Gordon, General manager

**OWNERS:**

\_\_\_\_\_  
Witness

\_\_\_\_\_ (SEAL)  
[Name]

\_\_\_\_\_  
Witness

\_\_\_\_\_ (SEAL)  
[Name]