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Resolution No. 17-006

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES ESTABLISHING A POLICY ON LIENS FOR UNPAID UTILITY RENTS, RATES, FEES, AND ASSESSMENTS CONCERNING SPECIAL UTILITY PROJECTS

WHEREAS, Section 4.11, *inter alia*, of the Charter for the Board of Public Works of the City of Lewes (the “Lewes BPW”), being Chapter 10, Volume 77, Laws of Delaware, as amended (the “Lewes BPW Charter”), grants the Lewes BPW authority to fix rents, rates, fees, and assessments for utility systems within the Lewes BPW Service Area; and

WHEREAS, consistent with this authority, the Lewes BPW may assess such utility charges for special utility projects, including but not limited to infill utility extension projects; and

WHEREAS, Section 4.12, *inter alia*, of the Lewes BPW Charter provides that any such utility rents, rates, fees, or assessments remaining unpaid for thirty (30) days after becoming due shall become an automatic lien upon the premises to which such utility facilities are connected; and

WHEREAS, the Board of Directors of the Lewes BPW (the “Board of Directors”) believes strongly in the importance of maintaining an effective enforcement mechanism for the collection of unpaid utility charges, including the above-referenced automatic lien, in order to help ensure that current and future customers have access to safe, reliable, and affordable utility services; and

WHEREAS, the Board of Directors appreciates that circumstances involving large utility charges associated with special utility projects often warrant flexibility in repayment options for such charges; and

WHEREAS, the Board of Directors concludes that, *inter alia*, allowing property owners to enter into a Forbearance and Repayment Agreement establishing a monthly repayment in exchange for the Lewes BPW’s agreement to forbear on excising its rights to collect the unpaid assessments in circumstances involving large utility charges for special utility projects strikes a proper balance between maintaining an effective enforcement mechanism and providing reasonable flexibility in repayment;

WHEREAS, the Board of Directors deems it in the best interests of the Lewes BPW utility system and customers, both current and future, to establish a Policy on Liens for Unpaid Utility Rents, Rates, Fees, and Assessments Concerning Special Utility Projects in order to provide additional guidance on the treatment of liens for such anticipated unpaid utility charges.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LEWES BOARD OF PUBLIC WORKS, IN SESSION MET THIS 5 DAY OF December 2017, THAT:

46 **Section 1.** The *Policy on Liens for Utility Rents, Rates, Fees, and Assessments*
47 *Concerning Special Utility Projects* shall be established as provided in Exhibit "A" attached
48 hereto and incorporated herein.
49

50 **Section 2.** This Resolution shall take effect immediately upon its adoption by the
51 Board of Directors of the Lewes Board of Public Works.
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53
54 Adopted by the Board of Directors
55 Of the Lewes Board of Public Works
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57 _____
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59 I, A. Thomas Owen, Secretary of the Board of Public Works of the City of Lewes, do
60 hereby certify that the foregoing is a true and correct copy of the Resolution passed by the Board
61 of Directors of the Lewes BPW at its meeting on December 5, 2017 at which meeting a
62 quorum was present and voting throughout and the same is still in full force and effect.
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Secretary

69 **EXHIBIT "A"**

70
71 **Policy on Liens for Utility Rents, Rates, Fees, and Assessments Concerning**
72 **Special Utility Projects**
73

74 There is hereby established, as hereinafter set forth, a Policy on Liens for Utility Rents, Rates,
75 Fees, and Assessments Concerning Special Utility Projects assessed pursuant to the lawful
76 authority of the Lewes Board of Public Works.

77
78 When the utility rents, rates, fees, or assessments, or any combination thereof, charged in
79 connection with a special utility project, including but not limited to infill utility extension
80 projects, remain unpaid for thirty (30) days after becoming due, the General Manager and Board
81 President shall be authorized to prepare, execute, and record a Notice of Lien with respect to
82 such property.

83
84 Where a Notice of Lien has been recorded for a property, the owner(s) of that property may
85 petition the Board of Directors to enter into a Forbearance and Repayment Agreement in a form
86 substantially similar to Exhibit "I". The Board of Directors, in its reasonable discretion, may
87 elect to enter into such Forbearance and Repayment Agreement with the owner(s) of the
88 property.

89
90 Where there is a signed Forbearance and Repayment Agreement in place and new owner(s) of
91 the property desire to acknowledge and assume the unpaid lien, the Board President is authorized
92 to, and shall, execute a substantially identical Forbearance and Repayment Agreement with the
93 new owner(s) permitting the new owner(s) to continue making the monthly payments previously
94 being paid by the owner(s) of the property when the Notice of Lien was recorded.

95
96 The General Manager shall inform the Board of Directors of any new Forbearance and
97 Repayment Agreements executed as a result of conveyance of a property to new owner(s).

98
99 Nothing herein shall serve to waive, eliminate, or otherwise undermine the ability of the Board
100 of Public Works to utilize lawful policies and procedures otherwise available in the assessment
101 and collection of such delinquent charges.

EXHIBIT "I"
(Forbearance and Repayment Agreement)