

# CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9277

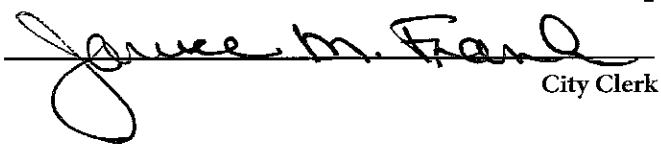
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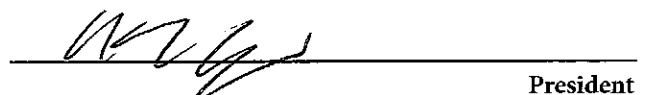
TITLE

**RESOLUTION TO APPROVE A LANDLORD'S CERTIFICATION,  
WAIVER AND ESTOPPEL AGREEMENT**

**BE IT HEREBY RESOLVED** by the City Council of the City of Williamsport that the Mayor and City Controller are authorized to execute the attached Landlord's Certification, Waiver and Estoppel Agreement between the City of Williamsport, the Redevelopment Authority of the City of Williamsport, and West Third Street Partners, LLC for the property at 300 West Fourth Street, formerly known as the Beiter Block.

Approved

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
President

LANDLORD'S CERTIFICATION, WAIVER AND ESTOPPEL AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of March, 2022, to be effective March \_\_\_\_\_, 2022 by and between the **CITY OF WILLIAMSPORT**, a city of the third class (the "City") with offices located at 245 West Fourth Street, Williamsport, Pennsylvania; **REDEVELOPMENT AUTHORITY OF THE CITY OF WILLIAMSPORT**, a Redevelopment Authority, also with offices located at 245 West Fourth Street, Williamsport, Pennsylvania, 17701 (hereinafter the "Authority") (the City and the Authority being collectively referred to herein as the "Landlord"); **KISH BANK**, having an office at 2610 Green Tech Drive, State College, PA 16803 ("Bank"); and **WEST THIRD STREET PARTNERS, LLC**, a Pennsylvania limited liability company, having an office at 401 Norle Street, State College, PA 16801 ("Borrower").

**BACKGROUND**

A. The City is the owner of certain premises consisting of 1.84 acres located in the City of Williamsport, Lycoming County, Pennsylvania, more particularly described on Exhibit "A" attached hereto, and commonly known as the "Beiter Block" (the "Premises");

B. By Lease Agreement dated September 25, 2006, (the "Master Lease") the City leased the Premises to the Authority;

C. By Lease Agreement dated September 25, 2006 (the "Ground Lease") the Authority leased the Premises to Borrower for the construction by Borrower of a movie theater complex, on the terms and conditions set forth therein (the "Project").

D. Borrower will be entering into a Loan Agreement with Bank (the "Loan Agreement"), pursuant to which Bank has agreed to refinance the Project in the maximum principal amount of \$3,600,000.00 (the "Loan").

E. Borrower, as security for the Loan, will grant to Bank:

(1) A leasehold mortgage of the Premises (the "Leasehold Mortgage");

(2) A Collateral Assignment of Ground Lease for the Premises (the "Assignment"), including an assignment of the Ground Lease and an assignment of the option to purchase the Premises as set forth in Section 21.01(c) of the Ground Lease; and

(3) A security interest in all furniture, fixtures and equipment located in or on the Premises and used in connection with the Project (the "Personal Property").

F. The Personal Property has been or may become affixed to the Premises.

**NOW, THEREFORE**, in consideration of the Loan extended by Bank to Borrower, at any time, and intending to be legally bound hereby, Landlord, Bank, and Borrower agree as follows:

1. Subject to the terms hereof, Landlord subordinates in favor of Bank any Landlord's lien, all rights of levy or distraint, security interest or other interest Landlord may now or hereafter have in any of the Personal Property, whether as security for the payment of rent or otherwise.

2. The Personal Property may be installed in or located on the Premises and is not and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, provided that the installation (or removal) of the Personal Property does not damage the Premises.

3. In the event of the exercise by Bank of any rights granted to Bank with respect to the Personal Property upon any default by Borrower under its obligations to Bank, Landlord hereby grants Bank the right and license to occupy the Premises for so long as is necessary to carry out the purposes described below during the term of the Ground Lease and for a period of up to sixty (60) days following the date of the "Default Notice" as defined below. The foregoing license shall include the right of Bank at its option to (i) enter and use any or all of the Personal Property of Borrower and (ii) to inspect, remove or take any action with respect to the Personal Property, including accounts or to enforce Bank's rights with respect thereto, including, but not limited to, the examination and duplication of the books and records related to accounts or to otherwise handle, deal with or dispose of same. If the Ground Lease shall terminate (or be terminated) prior to or during Bank's possession or occupancy of the Premises, Bank's right to enter or continue occupancy under the foregoing license shall be subject to the payment to Landlord by Bank of the rent due under the Ground Lease for the period of Bank's entry into the Premises until the date Bank relinquishes its license to occupy the Premises (the "License Period"), prorated on a per diem basis, without any obligation on the part of Bank for rent in arrears. All physical damage to the Premises caused by the removal of the Personal Property by Bank shall be repaired promptly by Bank at its sole expense.

4. Landlord hereby consents to the Leasehold Mortgage and the Assignment on the terms and conditions set forth herein, including without limitation, the assignment of Borrower's option to purchase the Premises as set forth in Section 21.01(c) of the Ground Lease. Nothing herein contained shall be construed to (i) modify, waive, impair or affect any of the provisions contained in the Ground Lease (except as may be expressly provided herein), (ii) waive any present or future breach of, or default under, the Ground Lease or any rights of Landlord against any person or entity liable or responsible for the performance thereof, (iii) enlarge or increase Landlord's obligations or Tenant's rights under the Ground Lease or otherwise; and all provisions of the Ground Lease are hereby declared by Tenant to be in full force and effect. Nothing herein contained shall be construed as a consent to or approval or ratification by Landlord of any of the particular provisions of the Leasehold Mortgage, Assignment or any other agreement or document pertaining to the Loan or as a representation or warranty by Landlord with regard to same. Landlord has not, and will not, review or pass upon any of the provisions of the Leasehold Mortgage, Assignment or any other agreement or document pertaining to the Loan and shall not be bound or estopped in any way by the terms and conditions thereof.

5. Landlord represents and warrants to Bank as follows:

a. The Commencement Date of the Ground Lease (as defined in section 2.01) occurred on April 1, 2007.

b. The Ground Lease has not been modified, amended, supplemented, or restated and is in full force and effect on the date hereof.

c. No default or event of default has occurred under the Ground Lease or is continuing nor, to the Landlord's actual knowledge, is the Borrower responsible for any act or omission which, with the passage of time or notice, or both, would constitute a default or event of default under the Ground Lease.

d. There shall be no cancellation, surrender, (other than termination pursuant to the terms of the Ground Lease) modification, amendment or supplement to or of the Ground Lease (which has a material and adverse effect on the Bank's security) by joint action of the Landlord and the Borrower without the prior written consent of Bank which shall not be unreasonably withheld.

e. Upon the occurrence of a default or event of default under the Ground Lease which has not been cured or remedied by Borrower within the applicable grace period provided in the Ground Lease (a "Default"), the Landlord shall, prior to exercising any right or remedy which it may have under the Ground Lease or at law or in equity, provide Bank (at the address set forth in Paragraph 9 hereof) written notice of such Default (a "Default Notice").

f. Landlord shall provide Bank (i) with respect to monetary Defaults, thirty (30) calendar days and (ii) with respect to non-monetary Defaults, sixty (60) calendar days after receipt of any such Default Notice from the Landlord to cure any such Default for or on behalf of Borrower (the "Cure Period").

f. If Bank cures within the Cure Period such Default to the reasonable satisfaction of the Landlord, the Ground Lease shall be deemed to be in full force and effect and in good standing, and Bank shall be deemed to have attorned to the Landlord and agrees to keep, observe and perform all of the terms, covenants, conditions and agreements of Borrower as set forth in the Ground Lease and Landlord shall be bound to Bank under all terms, covenants and conditions of the Ground Lease for the balance of its term. Provided, however, that neither Bank nor Bank's assignee may remain in possession of the Premises for more than sixty (60) days without curing any such Default.

6. Landlord agrees that Bank shall not be liable for any obligation of the Borrower under the Ground Lease unless and until Bank enters the Premises, but thereafter shall remain liable for such obligations only for the period during which Bank remains in possession of the Premises. Without limiting the generality of the foregoing, in the event that Bank elects not to cure any Default by Borrower under the Ground Lease, Bank shall not be liable for the obligations of the Borrower under the Ground Lease by virtue of any such actions or nonaction.