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RESOLUTION

LANCASTER COUNTY CONVENTION CENTER AUTHORITY

WHEREAS, the Lancaster County Convention Center Authority (the "Authority") is a public body corporate and politic organized and existing under the Third Class County Convention Center Authority Act, Act of December 27, 1994, P.L. 1375, as amended and supplemented (the "Act"), of the Commonwealth of Pennsylvania (the "Commonwealth"); and

WHEREAS, the Authority previously issued its Hotel Room Rental Tax Revenue Bonds, Series of 2014 in the aggregate principal amount of \$62,595,000 (the "2014 Bonds") to finance a project of the Authority consisting of: (1) the current refunding of the Authority's Amended and Restated Hotel Room Rental Tax Revenue Bonds, Series of 2003 in the aggregate principal amount of \$39,670,000 (the "2003 Bonds") and its Amended and Restated Hotel Room Rental Tax Revenue Bonds, Series of 2007 (the "2007 Bonds"); (2) the establishment of necessary reserves and other funds; and (3) the payment of the costs and expenses of issuance of the 2014 Bonds; and

WHEREAS, the 2014 Bonds were issued pursuant to the terms of a Trust Indenture dated as of August 1, 2014 (the "Indenture"), between the Authority and Manufacturers and Traders Trust Company, as trustee (the "Trustee"); and

WHEREAS, the 2014 Bonds were purchased by Wells Fargo Municipal Capital Strategies, LLC, a wholly-owned subsidiary of Wells Fargo Bank, N.A (the "Bank") pursuant to the terms of a Continuing Covenant Agreement dated as of August 1, 2014, between the Authority and the Bank (the "Continuing Covenant Agreement"); and

WHEREAS, the Authority and the Bank have determined to modify certain terms and provisions of the 2014 Bonds, the Indenture and the Continuing Covenant Agreement to, among other things, (1) adjust the method of calculating interest on the 2014 Bonds and (2) extend the period during which the Bank has agreed to own the 2014 Bonds (the "2014 Bonds Amendment"); and

WHEREAS, the Bank has presented a Term Sheet to the Authority that details the terms and conditions for the 2014 Bonds Amendment (the "Term Sheet"); and

WHEREAS, this Authority desires to authorize its Executive Director, with the advice of counsel to this Authority, to negotiate the final terms and conditions of the Term Sheet and to take any and all actions required to complete the 2014 Bonds Amendment; and

WHEREAS, to complete the 2014 Bonds Amendment, this Authority desires to authorize the execution and delivery of an amendment and/or supplement to the Indenture, the Continuing Covenant Agreement and any other document, agreement or instrument necessary to effect the terms and conditions of the Term Sheet (collectively, the "Amendment Documents"); and

WHEREAS, the Authority previously entered into certain interest rate swap agreements consisting of a Master Agreement and an Amended and Restated Schedule to Master Agreement each dated as of September 28, 2011 (collectively, the "Master Agreement") and respective Amended and Restated Confirmations thereto each dated as of September 28, 2011 (the "Original Confirmations" and together with the Master Agreement, "Original Swap Agreements") with Wells Fargo Bank, National Association, as counterparty for the purpose of establishing an interest rate hedge with respect to the 2014 Bonds; and

WHEREAS, the Authority desires to amend and restate the Original Confirmations to modify certain terms thereunder to more closely match the variable rate payable by Wells Fargo Bank, National Association under the Original Swap Agreements to the variable rate to be payable by the Authority under the 2014 Bonds, as modified by the 2014 Bonds Amendment and to make any other necessary or desired changes and desires to authorize the execution and delivery of amended or amended and restated Confirmations and such other documents, instruments, agreements and certificates as shall be necessary in connection therewith (collectively, the "Swap Documents"); and

WHEREAS, to effect the proposed 2014 Bonds Amendment and the proposed amendment to the Original Swap Documents, the Authority must take, authorize and direct certain actions and must authorize and negotiate the terms of the Term Sheet, the Amendment Documents, the Swap Documents and the other documents, instruments, agreements and certificates necessary or desired in connection therewith (collectively, the "Financing Documents").

NOW, THEREFORE, BE IT RESOLVED by the Board of this Authority, as follows:

1. For the purpose of completing the proposed 2014 Bonds Amendment and the proposed amendment to the Original Swap Documents, the Board of this Authority hereby approves the execution and delivery of the Financing Documents. The Board hereby authorizes the Executive Director of this Authority to take any and all necessary steps to complete the proposed 2014 Bonds Amendment and the proposed amendment to the Original Swap Documents.

2. This Authority hereby authorizes the execution and delivery of the Term Sheet. The Term Sheet shall be substantially in the form and with such changes therein as may be made and approved as provided in paragraph 3 hereof. Upon execution and delivery of the Term Sheet, a copy of each of the Term Sheet shall be delivered to the Secretary of this Authority and shall be attached to this Resolution and made a part hereof by this reference.

3. The Chair or Vice Chair and Secretary or Assistant Secretary of this Authority, as appropriate, are authorized and directed to execute, to attest, to seal, to acknowledge and to deliver, as applicable, the Term Sheet in the form and with any changes therein as such officers of this Authority executing the same may approve, its execution and delivery thereof to constitute conclusive evidence of such approval. Upon execution and delivery of the Term Sheet, a copy of the Term Sheet shall be delivered to the Secretary of this Authority and shall be attached to this Resolution and made a part hereof by this reference.

4. This Authority hereby authorizes the execution and delivery of the Amendment Documents. The Amendment Documents shall be substantially in the form and with such changes therein as may be made and approved as provided in paragraph 5 hereof. Upon execution and delivery of the Amendment Documents, a copy of each of the Amendment Documents shall be delivered to the Secretary of this Authority and shall be attached to this Resolution and made a part hereof by this reference.

5. The Chair or Vice Chair and Secretary or Assistant Secretary of this Authority, as appropriate, are authorized and directed to execute, to attest, to seal, to acknowledge and to deliver, as applicable, the Amendment Documents in the form and with any changes therein as such officers of this Authority executing the same may approve, their execution and delivery thereof to constitute conclusive evidence of such approval.

6. This Authority hereby authorizes the execution and delivery of the Swap Documents. The Swap Documents shall be substantially in the forms and with such changes therein as may be made and approved as provided in paragraph 7 hereof. Upon execution and delivery of the Swap Documents, a copy of each the Swap Documents shall be delivered to the Secretary of this Authority and shall be attached to this Resolution and made a part hereof by this reference.

7. The Chair or Vice Chair and Secretary or Assistant Secretary of this Authority, as appropriate, are authorized and directed to execute, to attest, to seal, to acknowledge and to deliver, as applicable, the Swap Documents in the form and with any changes therein as such officers of this Authority executing the same may approve, their execution and delivery thereof to constitute conclusive evidence of such approval.

8. Proper officers of this Authority are authorized and directed to proceed promptly with the undertakings herein contemplated and deemed to be necessary or appropriate and to take any and all actions necessary or desirable to effect, among other things: the completion of the proposed 2014 Bonds Amendment and the proposed amendment to the Original Swap Documents.

9. Proper officers of this Authority are authorized and directed to execute and to deliver such other documents, agreements, instruments and certificates and to do such other things as may be necessary to carry out and implement the transactions contemplated by the Financing Documents and the Swap Documents and to comply with the requirements of Sections 103 and 141 through 150 of the Code, and with any regulations applicable thereto. Proper officers of this Authority are authorized to pay, or cause to be paid, the costs and expenses necessary to complete the proposed transactions.

10. The Board of the Authority hereby appoints (i) Stevens & Lee, P.C., as bond counsel to the Authority in connection with the proposed transactions and (ii) Susquehanna Group Advisors, Inc., as swap advisor to the Authority in connection with the proposed transactions.

11. This Authority approves, ratifies, and confirms all action heretofore taken by officers and other persons on behalf of this Authority in connection with the undertakings herein contemplated.

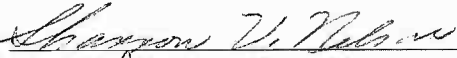
12. This Resolution shall become effective immediately.


13. In the event any provision, section, sentence, clause or part of this Resolution shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Resolution, it being the intent of this Authority that such remainder shall be and shall remain in full force and effect.

14. All resolutions or parts of resolutions inconsistent herewith expressly are repealed.

DULY ADOPTED, this 18th day of October, 2018, by the Board of Lancaster County Convention Center Authority, in lawful session duly assembled.

LANCASTER COUNTY CONVENTION
CENTER AUTHORITY

By: 
Chair

Attest: 
Secretary

(SEAL)

MEMORANDUM

To: Kevin Molloy
From: Julie B. Miller
Date: August 16, 2018
Re: Confidential

I. Issues for Consideration

1. Does the Joint Development Agreement require the LCCCA to engage the same operator for the Convention Center as Penn Square Partners engages for its hotel operator?
2. Does the Convention Center Qualified Management Agreement (hereafter "QMA") permit the Authority to renew under the same terms?

II. Discussion and Conclusion

1. Is the LCCCA required to have same operator for its convention center as Penn Square Partners has for its hotel operator?

The Joint Development Agreement, specifically at Section 2.1.9, states as follows:

Section 2.1.9 Management. LCCCA and PSP have each independently negotiated with and engaged Manager as the manager of the Convention Center and the Hotel, respectively, and agree to cause Manager to undertake to perform its obligations under the Convention Center Management Agreement and the Hotel Management Agreement so as to attempt to achieve the maximum reduction in operating costs for the Convention Center and the Hotel.

Section 1.1 of the Joint Development Agreement defines "Manager" as "Interstate Hotels & Resorts Company, or any successor, assign or replacement thereof." Given that the drafters of the Joint Development Agreement expressly defined the term "Manager" and made a point of explaining in Section 2.1.9 that the intention is that the LCCCA and PSP "independently negotiate" and "engage" the Manager, in an attempt to reduce costs, it is clear to me that the LCCCA must engage the same operator, as its operator.

In addition, the Condominium Declaration requires that the condominium be managed by a Common Manager. See Article XII, Section 12.1. The Condominium Declaration does not specify that the common manager must be Interstate, however, it does require that each unit owner have a separate management agreement with the Common Manager. Section 4.1. of the Condominium Management Agreement provides that it **may** be renewed if the parties to the Condominium Management Agreement agree to such a renewal. It will not renew unless the

Manager (Interstate) and Penn Square Condominium Association¹ agree to it **in writing**. Therefore, unless an affirmative act is taken to extend the term of the Condominium Management Agreement, it will expire on June 19, 2019. The Authority, on its own, cannot simply exercise or opt to renew the Condominium Management Agreement under Section 4.1.

2. The QMA permits LCCCA to renew a five-year extension provided that Interstate agrees to that renewal.

Paragraph 4.1 of the QMA (Interstate and the LCCCA) states that it “may be renewed if the parties agree to such renewal”... “but shall not renew, unless the Manager and the Authority mutually agree in writing to renew.” Manager is again defined as “Interstate Hotels Company, a Delaware corporation.” Based on this provision, it is my opinion that the LCCCA cannot unilaterally opt to renew under the same terms. Rather, it requires the agreement of Interstate, in writing.

Moreover, if the terms of the renewal with the Manager are different than the current terms, it could affect the operation of the condominium, as set forth in the Condominium Declaration. Section 12.1 of the Condominium Declaration limits the ability of any unit owner to modify or supplement its management agreement with the Common Manager in a way that would adversely affect any unit owner, without the approval of the unit owner that would be affected. Therefore, if the LCCCA is attempting to change an existing term at the time of the QMA renewal and such a change would “adversely affect” PSP, it requires the approval of PSP. There is no definition of the meaning of “adversely affect” within the Declaration, so arguably, even a minor change could “adversely affect” another unit owner.

¹ The Executive Board of the Condominium Association consists of a member elected by the “owner of the hotel unit” and one elected by the LCCCA. Declaration of Condominium, Section 11.1.

MEMORANDUM

To: Kevin Molloy, Executive Director
LCCCA
From: Julie B. Miller
Date: August 7, 2018
Re: Confidential

I. Background and Issue for Consideration

Board members occasionally generate emails to each other, which emails are circulated among a quorum of the board. Also, LCCCA staff provides Authority board members with informational emails, i.e., “news you can use”, as a way to keep them informed. On occasion, board members, upon receipt of the email from LCCCA staff, will “reply all” to the email, thereby generating a response that is sent to all recipients of the email, namely other board members. Are these practices in keeping with the Pennsylvania Sunshine Act?

II. Discussion and Conclusion

The aforementioned practices are not in keeping with the Pennsylvania Sunshine Act (“the Act”). The Act requires that “official action and deliberations by a quorum of members of an agency shall take place at a meeting open to the public.” 65 Pa.C.S.A. §704. “Deliberation” is defined in the Act as “the discussion of agency business held for the purpose of making a decision.” 65 Pa.C.S.A. §§703. The Act requires that any time a quorum of an agency deliberates agency business, it must do so at a public meeting unless an exception applies. 65 Pa.C.S.A. §704.

The Act does not permit deliberation by quorum in the context of emails. Emailing between Authority members by “replying all” to an email could constitute a “discussion of agency business for the purpose of making a decision” and a “deliberation” taking place outside of a public meeting, in contravention of the Act. This is particularly true in specific instances where board members are offering their individual opinions about an issue or topic raised in the email exchange. To the extent that there is an ongoing email discussion, including board members polling each other, about issues raised in an email, such discussions are required to take place in an open meeting. To avoid a violation of the Act, the better practice for all board members is to refrain from replying to all other recipients of the email.

In addition, any email correspondence between the board members in which a quorum of the members are participating in an email chain can be construed as violating the Act and subject to penalties, including fines. A member of an agency who is found to have willfully violated the Act can be subject to criminal charges and fines of up \$1,000 for the first offense and \$2,000 for the second offense.

There are a number of limited exceptions to the Act that provide for private deliberations, such as personnel issues, pending or threatened litigation, and the acquisition of real estate. However, there is no general exception that allows a quorum to deliberate privately via email or other non-public means of communication (i.e. conference calls).

Agencies are permitted to conduct fact-finding or information-gathering sessions, provided that those sessions involve no deliberation or official action. *Smith v. Township of Richmond*, 82 A.3d 407 (Pa. 2013).¹ Gatherings held solely for the purpose of collecting information or educating agency members about an issues are not held for the purpose of making a decision, even where the information obtained during that gathering may later assist the agency in taking official action. *Id.*

Certain “reply all” messages may not be deliberative in nature, i.e. “thank you for the information”. Rather, those messages would not constitute a deliberation and would be in compliance with the Act. Authority board members should be cautioned about the nature of deliberations and opinions via emails and should refrain from “replying all” to an email circulated to and among a quorum of board members. If board members receive an email communication that is sent to all other board members, or a quorum, they should not respond.

If you have any questions or need additional assistance, please let me know.

¹ Under *Smith*, the Executive Director’s email to board members for the purpose of providing information about issues would not be a violation of the Act.

MEMORANDUM

To: Lancaster County Convention Center Authority Board
From: Aaron S. Marines; Julie B. Miller
Date: August 23, 2018
Re: Potential conflicts of interest

The Executive Director was alerted to a situation where a Board member (the “Interested Board Member”) is taking legal action against Discover Lancaster, an entity with whom the Authority does business (“Discover Lancaster” or the “Related Party”). He asked us to provide guidance to the Board on the proper way to conduct itself when dealing with this situation. The Interested Board Member may not take any role in the negotiation or administration of the agreement with the Related Party. To be safe, the Interested Board Member should leave the portion of the meeting in which the agreement with Discover Lancaster is being discussed. Depending on the decision being made, the Interested Board Member may have a conflict of interest with respect to related decisions concerning the Authority’s funding package.

There are two sources of guidance for this question: The Third Class County Convention Center Authorities Act (“CCAA”) and the Pennsylvania Business Corporations Law (“BCL”) in general. In addition to these, the Authority should develop a conflict of interest policy to govern these kinds of situations.

First, the Board should determine whether a conflict of interest is present. A conflict of interest is present when a Board member could use their position on the Board to give him or herself a pecuniary gain. In this situation, a person suing a Related Party at the same time the Board is negotiating an agreement with the Related Party creates a conflict. This is because the Board member could use his position on the Board to improve his position in the lawsuit. This is a pecuniary benefit to the Board member. Even if the Board member feels that he can separate the two functions, both the potential and appearance of a conflict of interest exist. As a result, the Board needs to consider this a conflict.

Both the CCAA and the BCL discuss conflicts of interest of board members. Generally these laws focus on a board member receiving a benefit from the board, but the same thing applies when a Board member is adverse to an entity. In either case, the Board member has an interest in the contract that is outside of his or her duty to the Board itself. The CCAA specifically provides: “No board member, management-level employee or other employee of the authority, ... shall influence or attempt to influence the making of or supervise or in any manner deal with any contract with the authority in which the employee has an adverse interest.” This means that the Interested Board Member cannot participate in the discussion or voting on the proposed contract with Discover Lancaster.

To avoid any potential influence or any appearance of influence, I always advise the Board member to leave the room when the Related Party is discussed. This action should

continue any time the contract with the Related Party is negotiated or any change is considered, for as long as the Interested Board Member has a conflict. Since the CCAA prohibits any "attempt to influence" a decision, the Interested Board Member should not even discuss the matter outside of the meetings with any other Board members. Remember, the Interested Board Member is not only prohibited from voting on the matter. The Interested Board Member is not allowed to even attempt to influence any other Board member.

The Board needs to make this determination in related matters as well. In order for a conflict of interest to exist, the Board member has to have a pecuniary or monetary interest in the matter that is being acted upon. For certain decisions, I believe that the Interested Board Member does have a conflict of interest. Particularly, if the Board is trying to decide whether to rely on contributions from Discover Lancaster as a part of their overall financing package, the Interested Board Member seems to have a conflict. Some of the interactions between the Authority and Discover Lancaster will very likely have an impact on the business of the Interested Board Member. The goal of the conflict of interest rules is to make sure that no Board member is able to vote for his own self-interest over the interests of the Authority. This could absolutely happen in certain decisions involving Discover Lancaster and the Authority's funding. As a result, that Interest Board Member should not participate in this decision.

Finally, understand that this action is for the benefit of both the Board and the Interested Board Member. The CCAA and BCL have penalties for the individual Board member who violates the conflict of interest provisions. Trying to influence a decision in which the Board member is interested is also likely a breach of that Board member's fiduciary duty to the Authority. Also, if a Board fails to follow these requirements, the actions that were taken could be void. Finally, it just looks better for both the Board member and the rest of the Board if the Interested Board Member is totally removed from the matter under consideration.

Cc: Kevin Molloy, Executive Director