



New York City Campaign Finance Board
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Via C-Access
 October 7, 2016

Leslie Murray
 People for John C. Whitehead
 903 Drew Street, #410
 Brooklyn, NY 11208

Dear Leslie Murray:

Please find attached the New York City Campaign Finance Board’s (“CFB” or “Board”) Final Audit Report for the 2013 campaign of John Whitehead (the “Campaign”). CFB staff prepared the report based on a review of the Campaign’s financial disclosure statements and documentation submitted by the Campaign.

This report incorporates the Board’s final determination of October 23, 2015 (attached). As detailed in the report, the Campaign failed to demonstrate compliance with the Campaign Finance Act (the “Act”) and the Board Rules (the “Rules”).

As detailed in the attached Final Board Determination, the Campaign must repay the following:

CATEGORY	AMOUNT
Public Funds Repayment	\$29,770
Penalties Assessed	\$16,528
Total Owed	\$46,298

The full amount owed must be paid no later than **November 7, 2016**. Please send a check in the amount of \$46,298, payable to the “New York City Election Campaign Finance Fund,” to: New York City Campaign Finance Board, 100 Church Street, 12th Floor, New York, NY 10007.

If the CFB is not in receipt of the full amount owed by **November 7, 2016**, the Candidate’s name and the amount owed will be posted on the CFB’s website. The CFB may also initiate a civil action to compel payment. In addition, the Candidate will not be eligible to receive public funds

for any future election until the full amount is paid. Further information regarding liability for this debt can be found in the attached Final Board Determination.

The Campaign may challenge a public funds determination in a petition for Board reconsideration within thirty days of the date of the Final Audit Report as set forth in Board Rule 5-02(a). However, the Board will not consider the petition unless the Campaign submits new information and/or documentation and shows good cause for its previous failure to provide this information or documentation. To submit a petition, please call the Legal Unit at 212-409-1800.

The January 15, 2014 disclosure statement (#16) was the last disclosure statement the Campaign was required to file with the CFB for the 2013 elections. The Campaign is required to maintain its records for six years after the election, and the CFB may require the Campaign to demonstrate ongoing compliance. *See* Rules 3-02(b)(3), 4-01(a), and 4-03. In addition, please contact the New York State Board of Elections for information concerning its filing requirements.

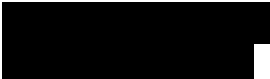
The CFB appreciates the Campaign's cooperation during the 2013 election cycle. Please contact the Audit Unit at 212-409-1800 or AuditMail@nyccfb.info with any questions about the enclosed report.

Sincerely,



Signature on original

Sauda S. Chapman
Director of Auditing and Accounting

c: John C. Whitehead


People for John C. Whitehead
903 Drew Street, #410
Brooklyn, NY 11208

Attachments



EC2013 Final Audit Report

People for John C. Whitehead

October 2016

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RESULTS IN BRIEF

The results of the New York City Campaign Finance Board's ("CFB" or "Board") review of the reporting and documentation of the 2013 campaign of John Whitehead (the "Campaign") indicate findings of non-compliance with the Campaign Finance Act (the "Act") and Board Rules (the "Rules") as detailed below:

Disclosure Findings

Accurate public disclosure is an important part of the CFB's mission. Findings in this section relate to the Campaign's failure to completely and timely disclose the Campaign's financial activity.

- The Campaign did not report or inaccurately reported financial transactions to the Board (see Finding #1).

Contribution Findings

All campaigns are required to abide by contribution limits and adhere to the ban on contributions from prohibited sources. Further, campaigns are required to properly disclose and document all contributions. Findings in this section relate to the Campaign's failure to comply with the requirements for contributions under the Act and Rules.

- The Campaign accepted a contribution exceeding the \$2,750 contribution limit for the 2013 election cycle (see Finding #2).
- The Campaign accepted contributions from prohibited sources (see Finding #3).
- The Campaign accepted a contribution from an unregistered political committee (see Finding #4).
- The Campaign did not disclose in-kind contributions received (see Finding #5).

Expenditure Findings

Campaigns participating in the Campaign Finance Program are required to comply with the spending limit. All campaigns are required to properly disclose and document expenditures and disburse funds in accordance with the Act and Rules. Findings in this section relate to the Campaign's failure to comply with the Act and Rules related to its spending.

- The Campaign made cash disbursements greater than \$100 and the Campaign maintained a petty cash fund greater than \$500 (see Finding #6).

- The Campaign did not properly report and document its joint expenditures (see Finding #7).
- The Campaign made expenditures that were not in furtherance of the Campaign (see Finding #8).
- The Campaign made post-election expenditures that are not permissible (see Finding #9).
- The Campaign did not provide requested documentation for reported expenditures (see Finding #10).

Public Matching Funds Findings

The CFB matches contributions from individual New York City residents at a \$6-to-\$1 rate, up to \$1,050 per contributor. The CFB performs reviews to ensure that the correct amount of public funds was received by the Campaign and that public funds were spent in accordance with the Act and Rules. Findings in this section relate to whether any additional public funds are due, or any return of public funds by the Campaign is necessary.

- The Campaign did not document qualified expenditures equal to the amount of public funds it received (see Finding #11).
- The Campaign received an overpayment of public funds (see Finding #12).

Other Findings

- The Campaign did not respond to the Draft Audit Report (see Finding #13).

BACKGROUND

The Campaign Finance Act of 1988, which changed the way election campaigns are financed in New York City, created the voluntary Campaign Finance Program. The Program increases the information available to the public about elections and candidates' campaign finances, and reduces the potential for actual or perceived corruption by matching up to \$175 of contributions from individual New York City residents. In exchange, candidates agree to strict spending limits. Those who receive funds are required to spend the money for purposes that advance their campaign.

The CFB is the nonpartisan, independent city agency that administers the Campaign Finance Program for elections to the five offices covered by the Act: Mayor, Public Advocate, Comptroller, Borough President, and City Council member. All candidates are required to disclose all campaign activity to the CFB. This information is made available via the CFB's online searchable database, increasing the information available to the public about candidates for office and their campaign finances.

All candidates must adhere to strict contribution limits and are banned from accepting contributions from corporations, partnerships, and limited liability companies. Additionally, participating candidates are prohibited from accepting contributions from unregistered political committees. Campaigns must register with the CFB, and must file periodic disclosure statements reporting all financial activity. The CFB reviews these statements after they are filed and provides feedback to the campaigns.

The table below provides detailed information about the Campaign:

Name: John C. Whitehead	Contribution Limit:
ID: 802	\$2,750
Office Sought: City Council	
District: 42	Expenditure Limit:
	2010–2012: N/A
Committee Name: People for John C. Whitehead	2013 Primary: \$168,000
Classification: Participant	2013 General: N/A
Certification Date: June 06, 2013	
	Public Funds:
Ballot Status: Primary	Received: \$65,314
Primary Election Date: September 10, 2013	Returned: \$50.63
Party: Democratic	
	Campaign Finance Summary:
	http://bit.ly/1rkRtWp

SCOPE AND METHODOLOGY

Pursuant to Admin. Code § 3-710(1), the CFB conducted this audit to determine whether the Campaign complied with the Act and Rules. Specifically, we evaluated whether the Campaign:

1. Accurately reported financial transactions and maintained adequate books and records.
2. Adhered to contribution limits and prohibitions.
3. Disbursed funds in accordance with the Act and Rules.
4. Complied with expenditure limits.
5. Received the correct amount of public funds, or whether additional funds are due to the Campaign or must be returned.

Prior to the election, we performed preliminary reviews of the Campaign's compliance with the Act and Rules. We evaluated the eligibility of each contribution for which the Campaign claimed matching funds, based on the Campaign's reporting and supporting documentation. We also determined the Candidate's eligibility for public funds by ensuring the Candidate was on the ballot for an election, was opposed by another candidate on the ballot, and met the two-part threshold for receiving public funds. After the election, we performed an audit of all financial disclosure statements submitted for the election (see summary of activity reported in these statements at Appendix #1).

To verify that the Campaign accurately reported and documented all financial transactions, we requested all of the Campaign's bank statements and reconciled the financial activity on the bank statements to the financial activity reported on the Campaign's disclosure statements. We identified unreported, misreported, and duplicate disbursements, as well as reported disbursements that did not appear on the Campaign's bank statements. We also calculated debit and credit variances by comparing the total reported debits and credits to the total debits and credits amounts appearing on the bank statements. Because the Campaign reported that more than 10% of the dollar amount of its total contributions were in the form of cash contributions, we compared the total cash contributions reported to the total of cash deposits on itemized deposit slips.

As part of our reconciliation of reported activity to the bank statements the Campaign provided, we determined whether the Campaign properly disclosed all bank accounts. We also determined if the Campaign filed disclosure statements timely and reported required activity daily during the two weeks before the election. Finally, we reviewed the Campaign's reporting to ensure it disclosed required information related to contribution and expenditure transactions, such as intermediaries and subcontractors.

To determine if the Campaign adhered to contribution limits and prohibitions, we conducted a comprehensive review of the financial transactions reported in the Campaign's disclosure statements. Based on the Campaign's reported contributions, we assessed the total amount contributed by any one source and determined if it exceeded the applicable limit. We also determined if any of the contribution sources were prohibited. We reviewed literature and other documentation to determine if the Campaign accounted for joint activity with other campaigns.

To ensure that the Campaign disbursed funds in accordance with the Act and Rules, we reviewed the Campaign's reported expenditures and obtained documentation to assess whether funds were spent in furtherance of the Candidate's nomination or election. We also reviewed information from the New York State Board of Elections and the Federal Election Commission to determine if the Candidate had other political committees active during the 2013 election cycle. We determined if the Campaign properly disclosed these committees, and considered all relevant expenditures made by such committees in the assessment of the Campaign's total expenditures.

We requested records necessary to verify that the Campaign's disbursement of public funds was in accordance with the Act and Rules. Our review ensured that the Campaign maintained and submitted sufficiently detailed records for expenditures made in the election year that furthered the Candidate's nomination and election, or "qualified expenditures" for which public funds may be used. We specifically omitted expenditures made by the Campaign that are not qualified as defined by the Campaign Finance Act § 3-704.

We also reviewed the Campaign's activity to ensure that it complied with the applicable expenditure limits. We reviewed reporting and documentation to ensure that all expenditures—including those not reported, or misreported—were attributed to the period in which the good or service was received, used, or rendered. We also reviewed expenditures made after the election to determine if they were for routine activities involving nominal costs associated with winding up a campaign and responding to the post-election audit.

To ensure that the Campaign received the correct amount of public funds, and to determine if the Campaign must return public funds or was due additional public funds, we reviewed the Campaign's eligibility for public matching funds, and ensured that all contributions claimed for match by the Campaign were in compliance with the Act and Rules. We determined if the Campaign's activity subsequent to the pre-election reviews affected its eligibility for payment. We also compared the amount of valid matching claims to the amount of public funds paid pre-election and determined if the Campaign was overpaid, or if it had sufficient matching claims, qualified expenditures, and outstanding liabilities to receive a post-election payment. As part of this review, we identified any deductions from public funds required under Rule 5-01(n).

We determined if the Campaign met its mandatory training requirement based on records of training attendance kept throughout the 2013 election cycle. Finally, we determined if the Campaign submitted timely responses to post-election audit requests sent by the CFB.

Following an election, campaigns may only make limited winding up expenditures and are not going concerns. Because the activity occurring after the post-election audit is extremely limited,

the audit focused on substantive testing of the entire universe of past transactions. The results of the substantive testing served to establish the existence and efficacy of internal controls. The CFB also publishes and provides to all campaigns guidance regarding best practices for internal controls.

To determine if contributors were prohibited sources, we compared them to entities listed in the New York State Department of State's Corporation/Business Entity Database. Because this was the only source of such information, because it was neither practical nor cost effective to test the completeness of the information, and because candidates could provide information to dispute the Department of State data, we did not perform data reliability testing. To determine if reported addresses were residential or commercially zoned within New York City, we compared them to a database of addresses maintained by the New York City Department of Finance. Because this was the only source of such data available, because it was not cost effective to test the completeness of the information, and because campaigns had the opportunity to dispute residential/commercial designations by providing documentation, we did not perform data reliability testing.

In the course of our reviews, we determined that during the 2013 election cycle a programming error affected C-SMART, the application created and maintained by the CFB for campaigns to disclose their activity. Although the error was subsequently fixed, we determined that certain specific data had been inadvertently deleted when campaigns amended their disclosure statements and was not subsequently restored after the error was corrected. We were able to identify these instances and did not cite exceptions that were the result of the missing data or recommend violations to the Board. The possibility exists, however, that we were unable to identify all data deleted as a result of this error.

The CFB's Special Compliance Unit investigated any complaints filed against the Campaign that alleged a specific violation of the Act or Rules. The Campaign was sent a copy of all formal complaints made against it, as well as relevant informal complaints, and was given an opportunity to submit a response.

The Campaign was provided with a preliminary draft of this audit report and was asked to provide a response to the findings. However, the Campaign did not respond to the audit report. The Campaign was subsequently informed of its alleged violations and obligation to repay public funds, and was asked to respond. The Campaign responded and the CFB evaluated any additional information provided by the Campaign. CFB staff recommended that the Board find that the Campaign must repay public funds and committed violations subject to penalty. The Campaign chose to contest the CFB staff recommendations. The Board's actions are summarized as a part of each Finding in the Audit Results section. The finding numbers and exhibit numbers, as well as the number of transactions included in the findings, may have changed from the Draft Audit Report to the Final Audit Report.

AUDIT RESULTS

Disclosure Findings

1. Financial Disclosure Reporting - Discrepancies

Campaigns are required to report every disbursement made, and every contribution, loan, and other receipt received. *See* Admin. Code § 3-703(6); Rule 3-03. In addition, campaigns are required to deposit all receipts into an account listed on the candidate’s Certification. Code § 3-703(10); Rule 2-06(a). Campaigns are also required to provide the CFB with bank records, including periodic bank statements and deposit slips. *See* Admin. Code §§ 3-703(1)(d), (g); Rules 4-01(a), (b)(1), (f).

The Campaign provided the following bank statements:

BANK	ACCOUNT #	ACCOUNT TYPE	STATEMENT PERIOD
TD Bank	XXXXXX7622	Checking	Mar 2013 – Dec 2013

Below are the discrepancies and the additional records needed, as identified by a comparison of the records provided and the activity reported by the Campaign on its disclosure statements.

a) The Campaign must provide the bank statements listed below:

BANK	ACCOUNT #	STATEMENT PERIOD
TD Bank	XXXXXX7622	Jan 2014 – Mar 2014

b) The Campaign did not report transactions listed on Exhibit I that appear on its bank statements.

c) The Campaign reported the transactions listed on Exhibit II that do not appear on its bank statements.

d) The Campaign did not properly report the transaction listed below:

ACCOUNT #	NAME	CHECK NO./ TRANSACTION	STATEMENT/ SCHEDULE/ TRANSACTION	PAID DATE	REPORTED AMOUNT	ACTUAL AMOUNT
XXXXXX7622	Therapy Wine Bar	102	8/F/R0000316	04/25/13	\$1,750.00	\$1,575.00

e) The Campaign reported duplicate transactions as listed below:

NAME	CHECK NO./ TRANSACTION	STATEMENT/ SCHEDULE/ TRANSACTION	PAID DATE	AMOUNT	DUPLICATE REPORTED AMOUNT
Davis, Renee	N/A	9/M/R0000462	05/15/13	\$25.00	
TD Bank	Debit	16/F/R0001220	05/15/13		\$25.00
Total					\$25.00

f) The Campaign must provide a copy of the itemized deposit slip listed below:

DATE OF DEPOSIT	DOLLAR AMOUNT
06/07/13	\$200.00

g) A review of the Campaign’s deposit slips revealed the following discrepancy:¹

TOTAL REPORTED CASH RECEIPTS	TOTAL CASH PER DEPOSIT SLIPS	DOLLAR VARIANCE	PERCENT VARIANCE
\$8,499.00	\$8,934.00	(\$435.00)	-5%

Previously Provided Recommendation

a) The Campaign must provide all pages of the requested bank statements.

¹ The percentage variance is determined by subtracting the Total Cash Per Deposit Slips from the Total Reported Cash Receipts, and then dividing by the Total Reported Cash Receipts. A positive variance indicates that the Total Reported Cash Receipts exceeds the Total Cash Per Deposit Slips. A negative variance indicates that the Total Reported Cash Receipts is less than the Total Cash Per Deposit Slips.

- b) The Campaign must amend its disclosure statements to report these transactions. The Campaign must also provide documentation for each transaction. Because bank statements provide limited information about a transaction, the Campaign should review invoices or other records to obtain all of the information necessary to properly report the transaction.
- c) For each transaction reported in the Campaign's disclosure statements that does not appear on the Campaign's bank statements, the Campaign must provide evidence to show that the transaction cleared the bank (i.e., a copy of the front and back of the check, and the bank statement showing the payment). Alternatively, the Campaign may provide evidence that the transaction was reported in error, or amend the Campaign's disclosure statement to void the check. For each voided check, the Campaign must either issue a replacement check or forgive the expenditure payment. Any forgiven liabilities will be considered in-kind contributions, which could result in contribution limit violations, or be considered contributions from a prohibited source. The Campaign may need to contact the payee to determine why the transaction did not clear.
- d) For inaccurately reported transactions, the Campaign must amend its disclosure statements to accurately report the transactions.
- e) For duplicate transactions, the Campaign must delete the duplicate transactions in C-SMART and submit amended disclosure statements. If the transactions are not duplicates, the Campaign must explain why the transactions are not duplicates, and provide supporting documentation. The Campaign may also need to amend its disclosure statements if it did not report transactions accurately.
- f) The Campaign must provide copies of the requested itemized deposit slips.
- g) To resolve the listed discrepancies, the Campaign must compare the cash receipts reported in its financial disclosure statements to supporting documentation, including deposit slips, bank statements, and any documentation not previously submitted. The Campaign should also review documentation to ensure that it correctly characterized the instrument type (i.e., Cash, Credit Card, Check, etc.) of each receipt it reported. The Campaign may need to amend its disclosure statements as a result.

Campaign's Response

- a) The Campaign responded to the Notice of Alleged Violations and Recommended Penalties and provided the December 2013 bank statement and a transaction report for the period of March 1, 2014 - March 13, 2014. The Campaign also provided a receipt showing the account was closed on March 13, 2014. However, the Campaign failed to provide bank statements covering the period from January 1, 2014 – March 13, 2014.
- b) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign explained that it was not able to access its bank account online due to fraudulent activity and, therefore, could not print copies of the cancelled checks for the transactions made by check to

determine which workers were paid. The Campaign stated that check number 288 was a payment to Shamika Chappel and provided a copy of the cancelled check. Additionally, the Campaign provided an affidavit of forgery for check number 148 and stated this was a fraudulent transaction. However, the Campaign failed to report the transactions.

c – f) The Campaign did not respond to these findings.

g) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated it reviewed its cash receipts and its deposit slips, but was unable to reconcile the discrepancy.

Board Action

a) The Board found the Campaign in violation but did not assess a penalty.

b) The Board found the Campaign in violation and assessed \$58 in penalties.

c – f) The Board has taken no further action on these matters other than to make them a part of the Candidate's record with the Board.

g) The Board found the Campaign in violation and assessed \$108 in penalties.

Contribution Findings

2. Prohibited Contributions – Contributions Over the Limit

Campaigns may not accept contributions, either directly or by transfer, from any single source in excess of the applicable contribution limit for the entire election cycle. A single source includes, but is not limited to, any person or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled. *See* Rule 1-04(h). Cumulative contributions from a single source may include monetary contributions, in-kind contributions, and outstanding loans or advances, etc.

Candidates participating in the Program may contribute up to three times the contribution limit to their own campaign. *See* Admin. Code § 3-703(1)(h). Non-participating candidates are not limited in the amount they can contribute to their own campaign from their own money. *See* Admin. Code § 3-719(2)(b).

The Campaign accepted contributions in excess of the contribution limit in the following instance:

CONTRIBUTIONS OVER THE LIMIT					
NAME	STATEMENT/ SCHEDULE/ TRANSACTION	TRANSACTION TYPE	INCURRED/ RECEIVED/ REFUNDED DATE	AMOUNT	NOTE
Simonette, Daniel	9/ABC/R0000579	Contribution	07/09/13	\$30.00	
Simonette, Daniel	Unreported	In-Kind Contribution	N/A	\$9,000.00	(1)
				Office Limit	(\$2,750.00)
				Amount Over-the-Limit	\$6,280.00

(1) Per the contract provided by the Campaign, the Campaign agreed to pay Daniel Simonette \$6,500.00 as an initial retainer fee for legal counsel and representation and \$7,500 for the filing and defense of petitions. Therefore, the total amount owed was \$14,000.00 (\$6,500.00 + \$7,500.00). However, the Campaign only paid two \$2,500.00 payments to Mr. Simonette on May 7, 2013 and September 10, 2013 for a total of \$5,000.00, resulting in a discount of \$9,000.00 (\$14,000.00 - \$5,000.00). See Exhibit III and Finding #5c.

Previously Provided Recommendation

In the Revised Notice of Alleged Violations and Recommended Penalties dated June 3, 2015, the Campaign was instructed that it may be able to reduce this penalty by providing either documentation demonstrating that it paid Daniel Simonette the full amount provided by the contract, or an amended contract, signed and dated by both parties, accompanied by an explanation of why the payment amount was reduced.

Campaign’s Response

This finding was identified as a result of the Campaign’s response to the Notice of Alleged Violations and Recommended Penalties dated May 7, 2015. The Campaign did not respond to the Revised Notice of Alleged Violations and Recommended Penalties dated June 3, 2015.

Board Action

The Board found the Campaign in violation and assessed \$7,780 in penalties.

3. Prohibited Contributions – Corporate/Partnership/LLC

Campaigns may not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for a loan from any corporation. This prohibition also applies to contributions

received after December 31, 2007 from any partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* New York City Charter §1052(a)(13); Admin. Code §§ 3-703(1)(l), 3-719(d); Rules 1-04(c), (e).

The Campaign accepted contributions from entities listed on the New York State Department of State’s website as corporations, partnerships, and/or LLCs in the following instances:

CONTRIBUTIONS FROM PROHIBITED SOURCES				
NAME	STATEMENT/ SCHEDULE/ TRANSACTION	RECEIVED DATE	AMOUNT	NOTE
Therapy Wine Bar	8/L/R0000435	05/10/13	\$1,200.00	(1)
NBO Realty Inc.	Unreported	N/A	\$750.00	(2)

(1) The Campaign submitted a copy of a check as documentation of an expenditure refund for \$1,200 from Therapy Wine Bar (Transaction ID 8/L/R0000435). However, the Campaign did not provide documentation detailing the basis for the refund. *See* also Finding #10.

(2) Per the Campaign's lease agreement, the Campaign agreed to pay \$1,500 per month from May 15, 2013 to September 30, 2013. Therefore, for the term of four and a half months, the total amount owed was \$6,750 (\$1,500 x 4.5). However, the Campaign only paid \$6,000 (see Transaction ID 9/F/R0000457), resulting in a \$750 in-kind contribution. *See* also Finding #5b and Exhibit IV.

Previously Provided Recommendation

The Campaign must address each transaction individually:

- The Campaign must refund each prohibited contribution by bank or certified check, and provide the CFB with a copy of the refund check, or pay the Public Fund an amount equal to the contribution.
- Alternatively, the Campaign may provide documentation or evidence showing that it did not receive a contribution from a prohibited entity.

Even if the prohibited contribution is refunded, accepting a prohibited contribution may result in a finding of violation and the assessment of a penalty.

Campaign’s Response

In its response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that it received a refund from Therapy Wine Bar because it held a fundraising event at the venue in May of 2013 and fewer guests attended the event than was anticipated. The Campaign further explained that Therapy Wine Bar provided only the check as documentation for the refund and that efforts made by the Campaign to obtain further documentation were unsuccessful. The

Campaign failed to provide documentation to substantiate its response and demonstrate that the refund was not a contribution to the Campaign.

In regards to NBO Realty Inc, the Campaign stated that, although the lease with NBO Realty Inc. began on May 15, 2013, it did not occupy the office space until June 1, 2013, because of unfavorable conditions. The Campaign further explained that the owner and the Campaign agreed it would only pay \$1,500.00 per month for the four months in which it occupied the space, from June 1, 2013 - September 30, 2013, and that the lease would be amended to reflect the new terms. However, the Campaign did not provide the amended lease. The Campaign failed to provide documentation from the vendor to substantiate its response and demonstrate that it had not received an in-kind contribution from NBO Realty Inc.

Board Action

The Board found the Campaign in violation and assessed \$2,450 in penalties.

4. Prohibited Contributions – Unregistered Political Committees

Participating campaigns may not, either directly or by transfer, accept any contribution, loan, guarantee, or other security for a loan from any political committee, unless it is registered with the CFB, or registers within ten days of receipt of the contribution. *See* Admin. Code §§ 3-703(1)(k), 3-707; Rule 1-04(d).

A list of registered political committees can be viewed on the CFB’s website, www.nyccfb.info. Political committees are often required to register with governmental agencies other than the CFB; however, registering with those agencies does not register them with the CFB.

The Campaign accepted a contribution from an unregistered political committee in the following instance:

CONTRIBUTIONS FROM UNREGISTERED POLITICAL COMMITTEES					
NAME	STATEMENT/ SCHEDULE/ TRANSACTION	RECEIVED DATE	AMOUNT	NOTE	
Teamsters Union Local No. 456	12/ABC/R0000823	08/27/13	\$250.00	(1)	

(1) The copy of the contribution check provided indicates that it was drawn on the Political Action Fund of the reported contributor.

Previously Provided Recommendation

The Campaign must address the prohibited contribution as follows:

- The Campaign must refund the prohibited contribution by bank or certified check, and provide the CFB with a copy of the refund check; or pay the Public Fund an amount equal to the contribution.
- The above finding may not be a violation if the Campaign can demonstrate that 1) the political committee is actually registered, or 2) the source of the contribution is actually a different and permissible type of entity. If the Campaign maintains that accepting this contribution was not a violation, it may submit documentation (such as proof of the name or type of entity) showing that accepting the contribution was not a violation.

Even if the prohibited contribution is refunded, accepting a prohibited contribution may result in a finding of violation and the assessment of a penalty.

Campaign's Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated it mistakenly believed that Teamsters Union Local No. 456 was a registered political committee. However, the Campaign failed to refund the prohibited contribution after CFB notification.

Board Action

The Board found the Campaign in violation and assessed \$500 in penalties.

5. Undocumented or Unreported In-Kind Contributions

In-kind contributions are goods or services provided to a campaign for free, paid by a third party, or provided at a discount not available to others. The amount of the in-kind contribution is the difference between the fair market value of the goods or services and the amount the Campaign paid. Liabilities for goods and services for the Campaign which are forgiven, in whole or part, are also in-kind contributions. In addition, liabilities for goods and services outstanding beyond 90 days are in-kind contributions unless the vendor has made commercially reasonable attempts to collect. An in-kind contribution is both a contribution and expenditure subject to both the contribution and expenditure limits. Volunteer services are not in-kind contributions. In-kind contributions are subject to contribution source restrictions. *See* Admin. Code § 3-702(8); Rules 1-02 and 1-04(g). Campaigns may not accept contributions from any corporation, partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* Admin. Code § 3-703(1)(l).

Campaigns are required to report all in-kind contributions they receive. *See* Admin. Code § 3-703(6); Rule 3-03. In addition, campaigns are required to maintain and provide the CFB

documentation demonstrating the fair market value of each in-kind contribution. *See* Admin. Code §§ 3-703(1)(d), (g); Rules 1-04(g)(2) and 4-01(c).

a) Documentation obtained by the CFB indicates that one or more expenditures were made to advance the election of the Candidate. However, the Campaign did not report the expenditures.

DESCRIPTION OF ITEM	EXHIBIT #	NOTE
Cigars	Va	(1)
Fundraiser	Vb	(2)

1) The Campaign provided documentation for a fundraiser held at the Brooklyn Sheraton Sky Bar Lounge on July 9, 2013. The fundraiser documentation states, "Cigars provided by Brooklyn Smokes." Information obtained by the CFB suggests Brooklyn Smokes may be a corporate entity, and therefore the in-kind contribution may be prohibited. *See* Admin. Code §§ 3-703(1)(l), 3-719(2)(b); Rule 1-04(e). If the vendor is incorporated, the Campaign must refund the vendor the full amount of the in-kind contribution.

2) The Campaign provided an invoice from Sideray Williams for a Campaign fundraising event on September 10, 2013, the day of the primary, at the Brooklyn Sheraton Sky Bar. The Campaign did not report costs related to this event, other than the DJ services provided by Sideray Williams.

b) The documentation for the expenditure listed below indicates that the Campaign received a discount in connection with the goods/services being provided. Per the Campaign's lease agreement, the Campaign agreed to pay \$1,500 per month from May 15, 2013 to September 30, 2013. Therefore, for the term of four and a half months, the total amount owed was \$6,750 (\$1,500 x 4.5). However, the Campaign only paid \$6,000, resulting in a discount of \$750. *See* Exhibit IV and Finding #3.

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	INVOICE DATE	AMOUNT	DISCOUNTED AMOUNT
*NBO Realty	9/F/R0000457	05/14/13	\$6,000.00	\$750.00

*This may also be a prohibited corporate contribution. *See* Admin. Code §§ 3-703(1)(l), 3-719(2)(b); Rule 1-04(e). *See* also Finding #3.

c) The documentation for the expenditures listed below indicate that the Campaign received a discount in connection with the goods/services being provided. Per the contract provided by the Campaign, the Campaign agreed to pay Daniel Simonette \$6,500.00 as an initial retainer fee for legal counsel and representation and \$7,500 for the filing and defense of petitions. Therefore, the total amount owed was \$14,000.00 (\$6,500.00 + \$7,500.00). However, the Campaign only paid

two \$2,500.00 payments on May 7, 2013 and September 10, 2013 for a total of \$5,000.00, resulting in a discount of \$9,000.00 (\$14,000.00 - \$5,000.00). *See Exhibit III and Finding #2.*

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	INVOICE DATE	AMOUNT	DISCOUNTED AMOUNT
Daniel Simonette	9/F/R0000442	05/07/13	\$2,500.00	\$4,000.00
Daniel Simonette	12/F/R0001169	09/10/13	\$2,500.00	\$5,000.00
			Total	\$9,000.00

Previously Provided Recommendation

a) For each transaction, the Campaign must provide a written explanation describing how the good or service was purchased or provided. If the purchase was previously reported, the Campaign must identify the relevant Transaction IDs of the purchase. If the Campaign purchased the goods or services listed, it must provide invoices, contracts, and any other documentation related to the purchase. If a third party purchased or donated the good or service, the Campaign must submit an in-kind contribution form completed by the contributor. If not previously reported, the Campaign must enter the bill and bill payment or in-kind contribution in C-SMART and submit an amendment to Statement 16.

b) The Campaign must provide an explanation for the discount noted in the documentation. If the discount is routinely available to the general public or others, the Campaign must provide written confirmation from the vendor. If the discount is not routinely available to others, the Campaign must report the amount of the discount as an in-kind contribution from the vendor and submit an amendment to Statement 16. If the vendor is a prohibited source, the Campaign must pay the amount of the discount to the vendor by bank or certified check and provide the CFB with copies of the refund check or pay the Public Fund an amount equal to the amount of the prohibited contribution.

c) This finding was identified as a result of the Campaign’s response to the Notice of Alleged Violations and Recommended Penalties dated May 7, 2015.

Campaign’s Response

a) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that cigars were not provided for the event at the Brooklyn Sheraton Sky Bar Lounge and that the information on the flyer was erroneous. The Campaign failed to substantiate its response with documentation from the vendor or adequately explain the discrepancy between the flyer produced by the Campaign and its response to the Notice.

Regarding the invoice from Sideray Williams, the Campaign stated that the invoice incorrectly listed the location of Brooklyn Sheraton Sky Bar for the event. The Campaign stated the DJ services were provided at the Campaign office. The Campaign failed to explain why there were no other costs related to this event.

b) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that, although the lease with NBO Realty Inc. began on May 15, 2013, it did not occupy the office space until June 1, 2013, because of unfavorable conditions. The Campaign further explained that the owner and the Campaign agreed it would only pay \$1,500.00 per month for the four months in which it occupied the space, from June 1, 2013 - September 30, 2013, and that the lease would be amended to reflect the new terms. However, the Campaign did not provide a copy of the amended lease. The Campaign failed to provide documentation to substantiate its response.

c) This finding was identified as a result of the Campaign's response to the Notice of Alleged Violations and Recommended Penalties dated May 7, 2015.

Board Action

a) The Board found the Campaign in violation and assessed \$200 in penalties.

b) The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board. *See* also Finding #3

c) The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board. *See* also Finding #2.

Expenditure Findings

6. Cash Disbursements Exceeding \$100 and Petty Cash Exceeding \$500

Campaigns are prohibited from maintaining a petty cash fund greater than \$500. *See* Rule 4-01(e)(2). Campaigns are also prohibited from spending amounts greater than \$100 except by checks from a bank account reported to the CFB and signed by the Campaign's authorized signatory. *See* Rule 1-08(i).

a) The Campaign made individual cash expenditures of more than \$100, as listed on Exhibit VI.

b) The Campaign made cash withdrawals listed below which resulted in a petty cash fund exceeding the \$500 limit.

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	DATE	AMOUNT	NOTE
Debit	Unreported	06/14/13	\$800.00	(1)

(1) This transaction was identified from the Campaign’s bank statements, but was not reported on a disclosure statement. *See* also Finding #1b.

Previously Provided Recommendation

- a) The Campaign must explain why the transactions do not constitute a violation of the Rules and must provide supporting documentation, such as evidence that a specific expenditure was not made in cash.
- b) The Campaign must explain why the transactions do not constitute a violation of the Rules and must provide supporting documentation, such as evidence that a specific expenditure was not made in cash. The Campaign must also provide a copy of its petty cash disbursement records, which may include its Petty Cash Journal from C-SMART.

Campaign’s Response

- a) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that it accepts responsibility for these transactions and that it made the cash expenditures in error when it incurred expenditures related to petitioning. Additionally, the Campaign provided a copy of the invoice from Pitta Bishop, a copy of the contract for Daniel Simonette and Leslie Murray, and a copy of the check register for all three expenditures. The Campaign’s response failed to provide evidence demonstrating that the expenditures were not made in cash.
- b) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that the \$800.00 debit was for payments made to individuals for collecting petition signatures. However, the Campaign is still in violation because it had a petty cash fund exceeding the \$500 limit at the time the withdrawal was made.

Board Action

- a) The Board found the Campaign in violation and assessed \$1,210 in penalties.
- b) The Board found the Campaign in violation and assessed \$50 in penalties.

7. Undocumented/Unreported Joint Expenditures

Campaigns are permitted to engage in joint campaign activities, provided that the benefit each candidate derives from the joint activity is proportionally equivalent to the expenditure. *See* Admin. Code § 3-715; Rule 1-04(p).

Upon request from the CFB, a campaign is required to provide copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Rule 4-01.

a) The Campaign submitted a copy of a palm card featuring the Candidate, William C. Thompson, Jr., Scott Stringer, Letitia James, and Charles “Joe” Hynes (see Exhibit VII). In response to the Penalty Notice, the Campaign stated it shared the cost of the palm card with Letitia James’s campaign and provided an invoice from Triboro Printing for the cost of the palm cards, which totaled \$707.69. However, documentation obtained by the CFB shows that the Campaign billed the James Campaign \$1,000.00 for the palm cards when the Campaign should have attributed the cost of the palm card amongst the five campaigns appearing on the card. Additionally, the Campaign did not provide a methodology for allocating the cost of the expenditure among the campaigns. Based on a review of this information, the Campaign did not fully account for the joint campaign activity with William C. Thompson, Jr., Scott Stringer, and Letitia James.

b) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated it shared the costs of primary election day workers with Letitia James’s campaign. The Campaign further explained that the expenditures totaled \$18,710.00, of which \$1,500.00 was paid by Letitia James’s campaign (see Exhibit VII). The Campaign provided a list of all primary day workers included in the shared costs. Based on a review of this information and because the Campaign failed to provide a methodology for the cost allocations of each Campaign’s share, the Campaign appears to have overpaid its share, resulting in an in-kind contribution to the James Campaign in the amount of \$7,855.00 ($(\$18,710.00 / 2) - \$1,500.00$).

Previously Provided Recommendation

a) If the Campaign previously accounted for the joint activity described above in its reporting, it must identify the associated transaction(s) reported by the Campaign by Transaction ID and provide documentation for the expenditure(s). If the Campaign did not report the expenditure(s), it must amend its disclosure statements to report the transaction(s). Additionally, the Campaign must provide a methodology for the cost allocations for each campaign’s share, and indicate whether the other campaigns have paid for their shares of the expenditures. If the other campaigns paid the Campaign (as opposed to paying the vendors), the Campaign must also identify by Transaction ID the incoming Other Receipts transactions. If the Campaign has not reported Other Receipts received, it must amend its disclosure statements to report the transactions. The Campaign must provide supporting documentation for its responses.

b) This finding was identified as a result of the Campaign's response to the Notice of Alleged Violations and Recommended Penalties dated May 7, 2015. In the Revised Notice of Alleged Violations and Recommended Penalties dated June 3, 2015, the Campaign was notified that it may be able to reduce these penalties by providing documentation of the expenditures, including a methodology for the cost allocations for each campaign's share, and an indication of whether the other campaigns have paid for their shares. If these expenditures were already reported, the Campaign must also identify them by Transaction ID.

Campaign's Response

a) The Campaign did not respond to this finding.

b) This finding was identified as a result of the Campaign's response to the Notice of Alleged Violations and Recommended Penalties dated May 7. The Campaign did not respond to the Revised Notice of Alleged Violations and Recommended Penalties dated June 3, 2015.

Board Action

a) The Board found the Campaign in violation and assessed \$100 in penalties.

b) The Board found the Campaign in violation and assessed \$100 in penalties.

8. Expenditures – Not In Furtherance of the Campaign

Campaigns may only spend campaign funds for items that further the candidate's election. Campaigns must keep detailed records to demonstrate that campaign funds were used only for those purposes. *See* Admin. Code §§ 3-703(1)(d), (g); Rule 4-01. The law gives examples of the types of expenditures that are presumed to be campaign-related, although in certain circumstances expenditures of the types listed as appropriate may be questioned. Among the relevant factors are: the quality of the documentation submitted; the timing and necessity of the expenditure; the amount of the expenditure and/or all expenditures of a specific type in relation to the Campaign's total expenditures; and whether the expenditure is duplicative of other spending. The law also prohibits the conversion of campaign funds to personal use which is unrelated to a political campaign, and provides examples of expenditures that are not in furtherance of a campaign. *See* New York State Election Law §14-130; Admin. Code §§ 3-702(21), 3-703, and 3-710(2)(c); Rules 1-03(a), and 5-03(e), and Advisory Opinion No. 2007-3 (March 7, 2007). Expenditures not demonstrated to be in furtherance of the candidate's election are considered "non-campaign related."

The Campaign reported the expenditures listed below which—based on the reporting and documentation—are non-campaign related:

PAYEE	STATEMENT/ SCHEDULE/ TRANSACTION	PURPOSE CODE	INVOICE DATE	DATE PAID	AMOUNT	NOTE
Kings Conduit Mobil	11/F/R0000786	OTHER	08/18/13	08/18/13	\$55.70	(1)
BP	12/F/R0001165	OTHER	08/26/13	08/26/13	\$53.05	(1)
Murray, Leslie A	12/F/R0001181	WAGES	09/10/13	09/10/13	\$4,500.00	(2)
Avis Car Rental	12/F/R0001127	OTHER	09/12/13	09/12/13	\$2,773.96	(1)
Total					\$7,382.71	

(1) The Campaign failed to provide documentation for this expenditure and explain how it was campaign-related.

(2) Per the employee contract, the employee was to be paid for work performed as Election Day Office Manager in July, August, and September of 2013. However, in the Campaign’s response to a letter from the CFB dated June 12, 2014, the Campaign stated the employee only worked in the month of September 2013 for a total of 21 hours. Additionally, the employee was paid as Office Manager and Treasurer during the same month.

Previously Provided Recommendation

The Campaign must explain how each expenditure listed is in furtherance of the Campaign, and provide supporting documentation. The explanation and documentation may include details of how, when, where, and by whom a good was used. The Campaign must review the questioned transactions and address any discrepancies in the timing. Expenditures that are not in furtherance of the Campaign may increase the amount of public funds that must be repaid.

Further, the Campaign must explain how it determined the rate of pay for Leslie Murray’s position; why the employee was paid for July and August when the Campaign has asserted that work was performed solely in September; and why the Campaign required an Election Day Office Manager when Ms. Murray was already employed as Office Manager. The Campaign should provide documentation to support its response.

Campaign’s Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign explained that it rented a vehicle from Avis Car Rental approximately one month before the primary election to be used for the duration of the Campaign. The expenditure to Kings Conduit Mobil was for gas during that time. The Candidate’s schedule and the daily duties of the Campaign’s office workers increased significantly, which necessitated the access to and use of a car. The Campaign stated the Candidate used the vehicle to attend various events and the Campaign workers used the vehicle to run errands for the Campaign, including picking up posters and literature from printers and delivering literature to campaign workers on the day of the primary election. The Campaign failed to provide detailed travel documentation, such as a travel log, to substantiate its response to confirm that the rental was not for personal use.

Regarding the expenditure to BP, the Campaign responded to the Notice of Alleged Violations and Recommended Penalties and stated it could not locate the invoice from BP. The Campaign did not explain how this expenditure was in furtherance of the Campaign.

Regarding the expenditure to Leslie Murray, the Campaign stated that the duties for Leslie Murray's role as Office Manager, Treasurer, and Primary Day Manager in the month of September 2013 were different and did not overlap. The Campaign further explained that the expenditures made to Leslie Murray for her role as Election Day Manager solely covered the duties required of her for that role on the day of the primary election and thereafter for a total of 21 hours. However, per the contract provided by the Campaign for Election Day Manager, Leslie Murray was to be paid a total of \$4,500 for the months of July 2013, August 2013, and September 2013. The Campaign failed to explain how it determined the duties and rate of pay for Leslie Murray's position as Election Day Manager versus her role as Treasurer and Office Manager that month and why Ms. Murray should have been paid \$4,500 for 21 hours of work performed. Additionally, the Campaign failed to provide documentation to substantiate its response, such as work product, that would demonstrate the payments to Ms. Murray were directly related to necessary campaign-related work performed as Election Day Manager.

Board Action

The Board found the Campaign in violation and assessed \$1,845 in penalties.

9. Expenditures – Improper Post-Election

After the election, campaigns may only make disbursements for the preceding election, or for limited, routine activities of nominal cost associated with winding up a campaign and responding to the post-election audit. Campaigns have the burden of demonstrating that post-election expenditures were for the preceding election or the limited and routine activities described in the law. *See* Admin. Code § 3-710(2)(c); Rule 5-03(e)(2).

Each expenditure listed on Exhibit VIII is an improper post-election expenditure due to the timing, amount and/or purpose reported by the Campaign or identified from a review of Campaign bank statements and/or documentation.

Previously Provided Recommendation

The Campaign must explain how each expenditure was for the preceding election, or was a routine and nominal expenditure associated with winding up the Campaign, and must provide supporting documentation. Expenditures that are not proper post-election expenditures may increase the amount of public funds that must be repaid.

Campaign’s Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that all of the transactions listed as improper post-election expenditures were made prior to the election. The Campaign provided a copy of cancelled check to Shamika Chappel (check number 288) dated September 10, 2013, however it did not provide a wage record to demonstrate that this was for work performed prior to the election. The Campaign also provided a notarized affidavit of forgery for check number 148, however this expenditure is still considered an impermissible post-election expenditure because it was not for the preceding election, nor was it associated with winding up the Campaign. The Campaign failed to provide documentation to demonstrate that the expenditures were for work performed prior to the Campaign or were routine and nominal expenditures associated with winding up the Campaign.

Board Action

The Board found the Campaign in violation and assessed \$820 in penalties.

10. Expenditure Documentation

Campaigns are required to provide copies of checks, bills, or other documentation to verify all transactions reported in their disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Rule 4-01.

The Campaign must provide supporting documentation or an explanation for the reported transaction listed below:

NAME	TRANSACTION TYPE	STATEMENT/ SCHEDULE/ TRANSACTION	INCURRED/RECEIVED/ REFUNDED/PAID DATE	AMOUNT	NOTE
Therapy Wine Bar	Expenditure Refund	8/L/R0000435	05/10/13	\$1,200.00	(1)

(1) The Campaign provided a copy of the check received from Therapy Wine Bar. However, it must also explain and provide documentation from the vendor showing the basis for the refund. *See* also Finding #2.

Previously Provided Recommendation

The Campaign must submit documentation, or explanations as indicated, for each listed transaction.

Campaign's Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that Therapy Wine Bar only provided it with a check as documentation for the refund received and that efforts were made by the Campaign to obtain further documentation were unsuccessful. The Campaign failed to provide documentation to substantiate its response and demonstrate that the refund was not a contribution to the Campaign.

Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board. *See* also Finding #3.

Public Matching Funds Findings

11. Qualified Expenditure Documentation

Public funds may only be used for "qualified" expenditures by a candidate's principal committee to further the candidate's nomination or election during the calendar year in which the election is held. Expenditures that are not considered qualified include, but are not limited to, undocumented or unreported expenditures, payments to the candidate or the candidate's relatives, payments in cash, contributions to other candidates, gifts, expenditures for petition defense or litigation, and advances except individual purchases of more than \$250. *See* Admin. Code § 3-704; Rule 1-08(g). Participants must return public funds, or may be limited in the amount of public funds they are eligible to receive post-election if they have not documented sufficient qualified expenditures. *See* Admin. Code § 3-710(2)(b); Rule 5-03(d).

Campaigns are required to obtain and maintain contemporaneous records that enable the CFB to verify that expenditures were qualified. *See* Admin. Code § 3-703(1)(d), (g); Rule 4-01. These records may include cancelled checks (front and back) and bills for goods or services. Bills must include the date the vendor was hired or the date the goods or services were received, the vendor's name and address, a detailed description of the goods or services, and the amount.

The Rules provide guidance for situations where contemporaneous records are either missing or incomplete. *See* Rule 4-01(a). First, a campaign must attempt to obtain a duplicate or more complete record from the vendor. If that is not possible, a campaign may modify an existing record or create a new record which must clearly identify the record as modified or recreated. In addition, any modified or recreated record must be accompanied by a notarized statement explaining the reason for and circumstances surrounding the record. The statement must be from a campaign representative who has firsthand knowledge of the recreated document and must explain why the original document is not available or insufficient. Upon review of the non-

contemporaneous record and statement, the CFB may still find the records are not sufficient to adequately document the transaction.

The Campaign received \$65,314 in public funds for the 2013 elections.² Previously, CFB staff requested documentation to demonstrate that public funds were used for qualified expenditures. Based on all the records submitted, the Campaign has provided sufficient documentation for \$44,216.45 in qualified expenditures.

The Campaign failed to document an additional \$21,097.55 as qualified and must repay this amount to the Public Fund. However, based on other reviews, the Campaign has additional repayment obligations (see Finding #12).

Previously Provided Recommendation

Any transaction marked with a “Q” is considered a qualified expenditure and no additional documentation or information is required. Transactions marked “NQ” cannot be qualified, for reasons such as a payment to a family member or a payment made in cash, and additional documentation will not make them qualified. If the Campaign disagrees, it must provide an explanation and documentation. All other transactions are marked with a code that explains what is missing or inadequate. The Code Key is located at the end of the list.

The list of transactions is sorted by amount, starting with the largest expenditures (disbursements followed by outstanding liabilities and advances greater than \$250, if applicable). If a transaction has more than one code, the Campaign must address all codes before that expenditure may be considered qualified. The Campaign must provide explanations and/or documentation where requested (copies of bills, detailed invoices, consulting agreements, work contracts, credit card statements, cancelled checks, etc., or recreated/modified records along with the required statements, as instructed above). In some cases, the Campaign may find it useful to supplement an invoice or other documentation already provided with evidence of work performed and/or a more detailed description of tasks performed or products received. In addition, the Campaign may need to submit amended disclosure statements to correct errors in its reporting of expenditures.

The Campaign must return a copy of the Qualified Expenditure Sample (included in the Draft Audit Report and Repayment Notice) with its response. All documents submitted to the CFB must be labeled with the corresponding Transaction IDs.

Campaign’s Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign provided additional documentation that reduced the amount the Campaign must return to the Fund to \$21,097.55.

² The Campaign received \$65,364 in public funds and repaid \$50, for a net public funds payment of \$65,314.

Board Action

The Board determined that the Campaign must repay \$21,097 to the Public Fund (\$65,314 in public funds received less \$44,216.45 in documented qualified expenditures.) The Committee is responsible for repaying \$21,097 in public funds, and the Candidate is jointly and severally responsible for repaying \$16,335 of this amount. However, based on other reviews, the Campaign has additional repayment obligations (see Finding #12).

12. Overpayment of Public Funds

Public matching funds are paid to campaigns at a \$6-to-\$1 rate. The amount of each payment is based on preliminary review by CFB staff of the matching claims reported in the campaign's disclosure statements. The amount of public funds a campaign is ultimately eligible to receive is determined by the Board at the conclusion of the post-election audit, and this amount may be more or less than the campaign received during the election. *See* Admin. Code § 3-710(2)(a); Rules 5-01(g),(k) and 5-03.

An overpayment of public funds may occur if matching claims originally considered to be valid during the election are withdrawn, or are determined to be invalid upon a review of new information or a more detailed post-election review. In addition, an overpayment of public funds may occur if a candidate's valid matching claims are reduced as a result of making transactions subject to Rule 5-01(n), which include: transfers to other political committees, payment of debt from a previous election, contributions to other candidates in excess of the applicable safe harbor amount, and spending on behalf of other candidates. The amount of public funds a candidate is eligible to receive may be reduced by up to six times the amount of the transactions deemed to be subject to Rule 5-01(n), because these transactions are deducted from matching claims. For example, paying \$1,000 of debt from a previous election with funds from the current campaign will reduce the campaign's valid matching claims by \$1,000, potentially resulting in a \$6,000 reduction in the amount of public funds the campaign is eligible to receive. *See* Rule 5-01(n).

On October 9 2013, the CFB notified the Campaign that it received \$1,800 more in public funds than it was eligible to receive, and advised the Campaign to raise additional valid matchable contributions and/or to correct invalid matching claims. Currently, the Campaign has \$5,924 in valid matching claims (see Exhibit IX). The Campaign also made \$7,855 in contributions to another political committee (see Finding #7b). Of that amount, \$4,855, or the amount in excess of the safe harbor established in Admin. Code § 3-705(8), has been deducted from the Campaign's valid matching claims due to Rule 5-01(n). Therefore, the Campaign is entitled to \$35,544 in public matching funds. The Campaign received \$65,364 in public funds during the election and returned \$50 during the post-election period, for a net public funds payment of \$65,314. Thus, the Campaign was overpaid by \$29,770 (\$35,544 - \$65,314).

If the Campaign does not validate additional matching claims and/or refute the transactions subject to Rule 5-01(n) deductions, the Campaign must repay the amount of the overpayment to

the Public Fund. However, based on other reviews, the Campaign has additional repayment obligations (see Finding #11).

Previously Provided Recommendation

The Campaign may provide documentation, an explanation, and/or amended reporting to validate matching claims currently considered invalid. The Invalid Matching Claims Report (provided in the Draft Audit Report and Repayment Notice) presents the details of each contribution considered invalid. The left side of the report shows the data reported by the Campaign for each matching claim and the codes that describe why the claim is invalid. The right side provides space for the Campaign to provide a written response and a check box that describes the action the Campaign is taking to address the invalid claim. Return this report with the response to this Final Audit Report. To supply additional or modified data, correct the appropriate transaction(s) in C-SMART and amend the appropriate disclosure statement(s). For transactions on the Invalid Matching Claims Report with more than one invalid code, the Campaign must address all the codes before the claims can be validated. No public funds will be disbursed on invalid claims.

Campaign’s Response

The Campaign did not respond to this finding.

Board Action

The Board determined that the Campaign must repay \$29,770 to the Public Fund.

Other Findings

13. Failure to Respond Timely

Campaigns are required to respond timely to requests from the CFB. *See* Admin. Code § 3-703(1)(d); Rules 1-09, 4-01.

The Campaign failed to submit the following:

REQUEST	DUE DATE	DATE SUBMITTED	# DAYS LATE
Draft Audit Report Response	11/12/14	N/A	Missing

Previously Provided Recommendation

This finding was identified as a result of the Campaign's response to the Notice of Alleged Violations and Recommended Penalties, dated May 7, 2015.

Campaign's Response

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated it was unaware that its request for an extension had not been granted and that its response was delayed due to its attempt to receive information from its bank.

Board Action

The Board found the Campaign in violation and assessed \$1,307 in penalties.

We performed this audit in accordance with the audit responsibilities of the CFB as set forth in Admin. Code § 3-710. We limited our review to the areas specified in this report's audit scope.

Respectfully submitted,



Signature on original

Sauda S. Chapman

Director of Auditing and Accounting

Date: October 7, 2016

Staff: Danielle Willemin, CFE

Angel Daniels, CFE

**New York City Campaign Finance Board
Campaign Finance Information System
Transaction Summary Report
Appendix 1**

Candidate: Whitehead, John C (ID:802-P)**Office:** 5 (City Council)**Election:** 2013

1. Opening cash balance (All committees)		\$0.00
2. Total itemized monetary contributions (Sch ABC)		\$23,234.00
3. Total unitemized monetary contributions		\$0.00
4. Total in-kind contributions (Sch D)		\$0.00
5. Total unitemized in-kind contributions		\$0.00
6. Total other receipts (Sch E - excluding CFB payments)		\$2,500.00
7. Total unitemized other receipts		\$0.00
8. Total itemized expenditures (Sch F)		\$90,486.12
Expenditure payments	\$90,326.12	
Advance repayments	\$160.00	
9. Total unitemized expenditures		\$0.00
10. Total transfers-In (Sch G)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
11. Total transfers-out (Sch H)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
12. Total loans received (Sch I)		\$8,250.00
13. Total loan repayments (Sch J)		\$8,250.00
14. Total loans forgiven (Sch K)		\$0.00
15. Total liabilities forgiven (Sch K)		\$0.00
16. Total expenditures refunded (Sch L)		\$1,680.52
17. Total receipts adjustment (Sch M - excluding CFB repayments)		\$25.00
18. Total outstanding liabilities (Sch N - last statement submitted)		\$0.00
Outstanding Bills	\$0.00	
Outstanding Advances	\$0.00	
19. Total advanced amount (Sch X)		\$0.00
20. Net public fund payments from CFB		\$65,314.00
Total public funds payment	\$65,364.00	
Total public funds returned	(\$50.00)	
21. Total Valid Matchable Claims		\$10,779.00
22. Total Invalid Matchable Claims		\$1,385.00
23. Total Amount of Penalties Assessed		\$16,528.00
24. Total Amount of Penalty Payments		\$0.00

New York City Campaign Finance Board
Campaign Finance Information System
Transaction Summary Report
Appendix 1

Candidate: Whitehead, John C (ID:802-P)

Office: 5 (City Council)

Election: 2013

25. Total Amount of Penalties Withheld

\$0.00

Exhibit I
People for John C. Whitehead
Unreported Transactions
(see Finding #1b)

Payee	Check No./ Transaction	Paid Date	Amount Notes
Withdrawal	Debit	06/14/13	\$800.00 (1)
Withdrawal	Debit	06/21/13	\$300.00
TTI Technologies	Debit	07/23/13	\$7.51
ATM Withdrawal	Debit	07/24/13	\$220.00
Withdrawal	Debit	07/25/13	\$85.00
Chappel, Shamika	288	09/11/13	\$420.00
Payton, Shawqi	148	09/13/13	\$200.00 (2)
Withdrawal	Debit	09/17/13	\$180.00 (3)
Withdrawal	Debit	09/17/13	\$180.00 (3)
Withdrawal	Debit	09/18/13	\$180.00 (3)
Withdrawal	Debit	09/24/13	\$180.00 (3)
Withdrawal	Debit	09/27/13	\$180.00 (3)
Withdrawal	Debit	10/03/13	\$180.00 (3)
Total			<u>\$3,112.51</u>

Notes:

- (1) See also Finding #6b.
- (2) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign stated that this was a fraudulent transaction and submitted an affidavit of forgery for the check. Therefore, this transaction was not included in the calculation of the penalty for this violation and the Board has taken no further action on this matter other than to make it a part of the Candidate's record with the Board.
- (3) See also Findings #6a and #9.

Exhibit II
People for John C. Whitehead
Uncleared Transactions
(see Finding #1c)

Transaction ID	Payee	Account	Check No./ Transaction	Date	Amount	Notes
R0000471	NationBuilder	7622	Debit	05/23/13	\$23.87	
R0000516	Edwards, William	7622	Debit	06/14/13	\$140.00	
R0000517	Chappel, Shamika	7622	Debit	06/14/13	\$30.00	
R0000518	Swinton, Jenest	7622	Debit	06/21/13	\$100.00	
R0000519	Swinton, Jenest	7622	Debit	06/21/13	\$170.00	
R0000520	Brown, Diamond	7622	Debit	06/15/13	\$100.00	
R0000521	Payton, Kwaku	7622	Debit	06/21/13	\$180.00	
R0000588	Maguire, Stella	7622	Debit	06/15/13	\$110.00	
R0000590	Edwards, William	7622	Debit	06/29/13	\$130.00	
R0000592	Swinton, Jenest	7622	Debit	06/30/13	\$120.00	
R0000810	Whitehead, Jay	7622	Debit	08/26/13	\$105.00	
R0000877	Timkee, Keisha	7622	207	09/10/13	\$180.00	
R0000917	Hernandez, Maria	7622	224	09/10/13	\$180.00	
R0000955	McClellan, Dekeeya	7622	242	09/10/13	\$180.00	
R0000997	Wilson, Ventrice	7622	259	09/10/13	\$180.00	
R0001096	Brent, Alexis	7622	298	09/10/13	\$180.00	
R0001200	Whitehead, Shakeema	7622	319	09/10/13	\$180.00	
R0001198	Whitehead, Jatina	7622	320	09/10/13	\$180.00	
R0001234	New York Phat Underground Wear	7622	329	10/02/13	\$200.00	(1)
Total					<u>\$2,668.87</u>	

Notes:

(1) See also Finding #9.

Exhibit III
People for John C. Whitehead
Daniel Simonette Contract
(see Findings #2 and #5c)

May 6, 2013

John C. Whitehead And
People for John C. Whitehead
903 Drew Street, 410
Brooklyn, NY 11208

**RE: Retainer Agreement- For the counseling and representation
Of John C. Whitehead for the Candidacy of John C. Whitehead for
Member of the NY City Council for the 42nd Council District, Kings
County, New York, as well as the preparation, filing and defense of
Democratic Petitions filed for the position in the Democratic Primary
2013**

Dear John C. Whitehead and People for John C. Whitehead:

**Let this letter serve as our agreement of retainer with regard to the above-
referenced matter pursuant to the following terms:**

1. Daniel R. Simonette, agrees to provide advise and counsel for the campaign including the formation of the campaign committee, campaign finance board issues, and overall legal advise related to the candidacy on the basis billable as follows:

(A) \$6, 500 as an initial retainer due upon the execution of this agreement

(B) \$ 7,500 for the filing and defense of petitions including:
review petitions for legal sufficiency; approve or secure petitions, binding and filing petitions, review of General objections filed, review of specific objections filed, legal representation on all matters pertaining to the validation of **John C. Whitehead** before the New York City Board of Elections; draft and file Orders to Show cause and petitions to validate **John C. Whitehead** and answer one invalidating court proceeding opposing **John C. Whitehead** and provide legal representation for **John C. Whitehead** at court appearances and proceeding before the New York State Supreme Court, Kings County, for one invalidating proceeding, (excluding appeal to the Appellate Division, Second Department or the Court of Appeals)

(C) \$6,000 for preparation and representation for each challenge filed against an opposing petition/candidacy.

(D) You are responsible for all fees and/or disbursements regarding this matter, i.e. copies, filing fees, process servers, etc. You agree to pay said fees and/or disbursements immediately. The estimated cost of the case index numbers and the request for judicial intervention for a validating court proceeding, process server fees and Xerox costs, excluding subpoena fees is about one thousand dollars (\$1200)

2. You agree to fully cooperate with counsel by providing him with the necessary information and resources when requested, and should you not cooperate it will be grounds for counsel to terminate his services.

Sincerely,



Signatures on original

ABOVE TERMS UNDERSTOOD



People for John C. Whitehead
903 Drew Street, 410
Brooklyn, NY 11208

Dated: 5/6/2013


Receipt \$2500 on initial retainer
5/6/2013 

Exhibit IV
People for John C. Whitehead
NBO Realty Lease
(see Findings #3 and #5b)

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#456

STANDARD FORM OF STORE LEASE
The Real Estate Board of New York, Inc.

2/94-A

Agreement of Lease, made as of this _____ day of May, 2013 ~~xxxxxxx~~, between
1110 Pennsylvania LLC, d/b/a/ NBO Realty, doing business at:
666 Old Country Road, Garden City, NY 11530
party of the first part, hereinafter referred to as OWNER, and
People for John C Whitehead, having the address:
903 Drew Street, #A410, Brooklyn, NY 11208
party of the second part, hereinafter referred to as TENANT,

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner
1110 Pennsylvania Avenue, Store #11, Brooklyn, NY 11207

in the building known as 1110 Pennsylvania Avenue, Brooklyn, NY 11207
in the Borough of Kings, City of New York, for the term of Five (5) months -----

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the
15th day of May 2013 ~~xxxx~~ ~~nineteen hundred and~~ _____, and to end on the
30th day of September, 2013 ~~xxxx~~ ~~and~~ _____
both dates inclusive, at an annual rental rate of \$18,000.00, payable in equal monthly installments
of \$1,500.00.

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first _____ monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, -legal representatives, successors and assigns, hereby covenant as follows:

- Rent: 1. Tenant shall pay the rent as above and as hereinafter provided. *Refer to Rider to Lease for Option Rents*
- Occupancy: 2. Tenant shall use and occupy demised premises for
Business office of city councilman candidate.

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

Alterations: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's rights thereto and to have them removed by Tenant, in which event, the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installation as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense.

shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building including the erection or operation of any crane, derrick or sidewalk shed, or in or to the demised premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other Casualty which are dealt with in Article 9 hereof.

Window Cleaning: 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire Insurance: 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or

Repairs: 4. Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner

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or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article. If the fire insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

Sub-ordination: 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

Tenant's Liability Insurance Property Loss, Damage, Indemnity: 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or other wise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agent, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire, and Other Casualty: 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage

look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain: 10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

Assignment, Mortgage, Etc.: 11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate tenant or the majority partnership interest of a partnership tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current: 12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Premises: 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floors or ceiling, wherever practicable. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon the demised premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

Vault, Vault Space, Area: 14. No vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or

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building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy: 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations whether or not of record.

Bankruptcy: 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default: 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title II of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

Remedies of Owner and Waiver of Redemption: 18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or other wise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration. (b) Owner

may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each

the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgement, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

Fees and Expenses: 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceeding and prevails in any such action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor, and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

No Representations by Owner: 20. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Term: 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment: 22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession: 23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of

one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.


No Waiver: 24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury: 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4 except for statutory mandatory counterclaims.

Inability to Perform: 26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgement of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

Bills and Notices: 27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Water Charges: 28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month,

 % (\$) of the total meter charges, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

Sprinklers: 29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised

installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ _____ on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

Elevators, Heat, Cleaning: 30. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall, if and insofar as existing facilities permit furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall at Tenant's expense, keep demised premises clean and in order, to the satisfaction to Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

Security: 31. Tenant has deposited with Owner the sum of \$0.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Captions: 32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

Definitions: 33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation-Shoring: 34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

Rules and Regulations: 35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule

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parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto.

shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct.

Glass: 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises.

Estoppel Certificate: 38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and, if so, specifying each such default.

Pornographic Uses Prohibited: 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so called rubber goods shops, or as a sex club of any sort, or as a "massage parlor."

Successors and Assigns: 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

1110 Pennsylvania LLC, Owner

[Redacted signature area]

Signatures on original

Witness for Tenant:

People for John C Whitehead, Tenant

[Redacted signature area]

John C Whitehead

ACKNOWLEDGEMENTS

CORPORATE OWNER STATE OF NEW YORK, ss: County of

CORPORATE TENANT STATE OF NEW YORK, ss: County of

On this day of , 19 , before me personally came to me known, who being by me duly sworn, did depose and say that he resides in that he is the of the corporation described in and which executed the foregoing instrument, as OWNER; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

On this day of , 19 , before me personally came to me known, who being by me duly sworn, did depose and say that he resides in that he is the of the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL OWNER STATE OF NEW YORK, ss: County of

INDIVIDUAL TENANT STATE OF NEW YORK, ss: County of

On this day of , 19 , before me personally came to be known and known to me to be the individual described in and who, as OWNER, executed the foregoing instrument and acknowledged to me that he executed the same.

On this day of , 19 , before me personally came to be known and known to me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that he executed the same.

GUARANTY

The undersigned Guarantor guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the agreements to be performed and observed by Tenant in the attached Lease, including the "Rules and Regulation" as therein provided, without requiring any notice to Guarantor of nonpayment, or nonperformance, or proof, or notice of demand, to hold the undersigned responsible under this guaranty, all of which the undersigned hereby expressly waives and expressly agrees that the legality of this agreement and the agreements of the Guarantor under this agreement shall not be ended, or changed by reason of the claims to Owner against Tenant of any of the rights or remedies given to Owner as agreed in the attached Lease. The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease. As a further inducement to Owner to make the Lease Owner and Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor against the other on any matters concerning the Lease or of this guaranty that Owner and the undersigned shall and do waive trial by jury.

.....
 Guarantor's Residence

 Business Address

 Firm Name
 STATE OF NEW YORK) ss.:
 COUNTY OF)

Dated: 19

On this day of , 19,
 before me personally came
 to me known and known to me to be the individual described in, and
 who executed the foregoing Guaranty and acknowledged to me that he
 executed the same.

.....
 Guarantor

.....
 Notary

.....
 Witness

IMPORTANT - PLEASE READ

**RULES AND REGULATIONS ATTACHED TO AND
 MADE A PART OF THIS LEASE
 IN ACCORDANCE WITH ARTICLE 35.**

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress to and egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any tenant or by jobbers, or others in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.
2. If the premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said premises clean and free from ice, snow, etc.
3. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.
4. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors and/or vibrations or interfere in any way with other Tenants or those having business therein.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Signs on interior doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.
6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall

be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations or the lease of which these Rules and Regulations are a part.
8. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such person.
9. Owner shall have the right to prohibit any advertising by any Tenant which, in Owner's opinion, tends to impair the reputation of Owner or its desirability as a building for stores or offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.
10. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.
11. Tenant shall not place a load on any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Owner's judgement to absorb and prevent vibration, noise and annoyance.
12. Refuse and Trash - Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Owner or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 12, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Owner harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, utilizing counsel reasonably satisfactory to Owner.

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TO

STANDARD FORM OF

Store
 Lease

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 © Copyright 1994. All rights Reserved.
 Production in whole or in part prohibited.

19

Per Year

Per Month

.....
 by
 asked by
 red by
 roved by

Exhibit Va

People for John C. Whitehead

Cigars at Brooklyn Sheraton Sky Bar Lounge Fundraiser

(see Finding #5a)

THE MEMBERS OF
THE MADURO

HOSTS

Fundraiser For
Candidate For City Council 42nd District
(Teamster Member)

JOHN C. WHITEHEAD

BROOKLYN SHERATON
SKYBAR LOUNGE

216-228 DUFFIELD ST. BROOKLYN, N.Y. 11201

Endorsed by: Sanitation Union Local 831
Teamsters Joint Council 16, (Municipal Workers)
Local 237, DEA, and many more.

Comedy By: A.G. White

Performance By: JENESIS

JULY 9, 2013

6:00 pm

Suggested Donations: \$25, \$50, \$75, \$100, \$250.

Please bring Checks if Possible

We CANNOT accept Corporate, Company, or LLC Checks

For more info call: (347) 435-0220

DRINK SPECIALS
UNTIL 8PM
AFTER WORK ATTIRE

CIGARS PROVIDED BY
BROOKLYN SMOKES

Paid For By The People For JOHN C. WHITEHEAD

Exhibit Vb
People for John C. Whitehead
Sideray Williams Invoice
(see Finding #5a)

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#804

Sideray Williams

August 26, 2013



Bill To:

People for John C. Whitehead
1110 Pennsylvania Avenue, Suite 11
Brooklyn, NY 11207
347-435-0220

DESCRIPTION	AMOUNT
Professional DJ services for September 10, 2013 Fundraiser at the Brooklyn Sheraton Sky Bar, Brooklyn, New York	\$ 300.00
Total	\$ 300.00



Signature on original

paid in full

Thank you for your business!

Exhibit VI
People for John C. Whitehead
Cash Disbursements Over \$100
(see Finding #6a)

Name	Statement/ Schedule/ Transaction ID	Paid Date	Amount	Notes
Edwards, William	9/F/R0000516	06/14/13	\$140.00	(1)
Payton, Kwaku	9/F/R0000521	06/21/13	\$180.00	(1)
Daniel Simonette	12/F/R0001169	09/10/13	\$2,500.00	(2)
Murray, Leslie A	12/F/R0001181	09/10/13	\$4,500.00	(2)
Pitta Bishop	12/F/R0001176	09/13/13	\$3,700.00	(3)
Debit	Unreported	09/17/13	\$180.00	(4)
Debit	Unreported	09/17/13	\$180.00	(4)
Debit	Unreported	09/18/13	\$180.00	(4)
Debit	Unreported	09/24/13	\$180.00	(4)
Debit	Unreported	09/27/13	\$180.00	(4)
Debit	Unreported	10/03/13	\$180.00	(4)
Total			<u>\$12 100 00</u>	

Notes:

- (1) The timesheet provided by the Campaign indicates that the Campaign made this expenditure in cash, although the Campaign reported another method of payment.
- (2) This transaction is listed as a withdrawal on the Campaign's October 2013 bank statement.
- (3) This transaction is listed as a withdrawal on the Campaign's September 2013 bank statement.
- (4) See also Finding #1b and #9.

Exhibit VII
People for John C. Whitehead
Palm Cards and Wages
(see Finding #7a and Finding #7b)

12/8832

Invoice

People for John C. Whitehead
1110 Pennsylvania Avenue, Suite 11
Brooklyn, NY 11207

Date: February 15, 2014

Bill To: Leticia James 2013
100 Church Street, Suite 820
New York, NY 10007
347-460-6096

Qty	Description	Unit Price	Line Total
10	Costs associated with recruiting, coordinating and supervising 10 volunteers in the 42nd City Council District. Volunteers will engage in political activities on behalf of Leticia James 2013 on primary day, September 10, 2013 from 6:00 a.m. to 9:00 p.m.	\$ 150.00	\$ 1,500.00
25,000	Palm cards for distribution at various poll sites in the 42nd City Council District on primary day, September 10, 2013.	0.04	1,000.00
		Subtotal \$	2,500.00
		Total \$	2,500.00

Make all checks payable to: **People for John C. Whitehead**

12/8832

VOTE FOR

JOHN C.



Whitehead

**for City Council 42nd District
PARA CONCEJAL DEL DISTRITO 42**



Whitehead will continue to work to

- ✓ **Create Jobs**
- ✓ **Improve Public Safety**
- ✓ **Empower our Community**

Whitehead vas a continuar

- ✓ **Crear Trabajos**
- ✓ **Mejorar la Seuidad Publica**
- ✓ **Empoderar a Nuestra Comunidad**

**Democratic Primary:
Tuesday, September 10, 2013**

**Primaria Democata:
Martes, 10 de Septiembre 2013**

**You may take this card to the voting booth!
Puede llevar esta tarjeta a las urnas de votacion!**

12/8832

ENDORSED BY

- Local Union 831 Uniformed Sanitationmen's Association
- Detectives' Endowment Association
- Lieutenants Endowment Association
- Captains' Endowment Association
- Patrolmen's Benevolent Association
- Uniformed Fire Officers Association
- Teamsters Joint Council 16
- Local Union No. 813
- District Council No. 9
- Local 282 Building Material Teamsters
- Local 812 Soft Drink Brewery Workers
- CWA 1182 Uniformed Traffic and Sanitation Officers
- Local 237, New York City Housing Authority Workers and School Safety Agents



Mayor
Alcalde
William C. Thompson, Jr.
Democrat
Democrata



Comptroller
Contralor
Scott Stringer
Democrat
Democrata



Public Advocate
Abogado Público
Letitia James
Democrat
Democrata



Re-Elect
Brooklyn District Attorney
Re-Elija para Fiscal
Charles "Joe" Hynes
Democrat
Democrata



City Council Member
42nd District
Concejal Distrito 42
John C. Whitehead
Democrat
Democrata

Democratic Primary: Tuesday, September 10, 2013
Primaria Democrata: Martes 10 de Septiembre 2013

You may take this card to the voting booth!
Puede llevar esta tarjeta a las urnas de votacion!

Exhibit VIII
People for John C. Whitehead
Improper Post-Election Expenditures
(see Finding #9)

Name	Statement/ Schedule/ Transaction ID	Purpose Code	Invoice Date	Paid Date	Amount	Notes
Chappel, Shamika	Unreported	N/A	N/A	09/11/13	\$420.00	(1)
Payton, Shawqi	Unreported	N/A	N/A	09/13/13	\$200.00	(1)
Debit	Unreported	N/A	N/A	09/17/13	\$180.00	(2)
Debit	Unreported	N/A	N/A	09/17/13	\$180.00	(2)
Debit	Unreported	N/A	N/A	09/18/13	\$180.00	(2)
Debit	Unreported	N/A	N/A	09/24/13	\$180.00	(2)
Debit	Unreported	N/A	N/A	09/27/13	\$180.00	(2)
New York Phat Underground Wear	16/F/R0001234	OTHER	10/02/13	10/02/13	\$200.00	(3)
Withdrawal	Unreported	N/A	N/A	10/03/13	\$180.00	(2)
Harris Jr., James	Unreported	N/A	N/A	03/11/14	\$2,000.00	(4)
Total					<u>\$3 900 00</u>	

Notes:

- (1) The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board. *See* also Finding #1b.
- (2) *See* also Findings #1b and #6a.
- (3) The Campaign failed to provide documentation to substantiate its response.
- (4) According to the contract agreement for James Harris Jr., provided by the Campaign, this is a bonus payment, which is not a permissible post-election expenditure.

Exhibit IX
People for John C. Whitehead
Detail Payment Report
(see Finding #12)

New York City Campaign Finance Board
 Campaign Finance Information System
 Detail Payment Report for 2013 Primary Election

Candidate: Whitehead, John C (ID: 802)

Office: City Council

District: 42

	Statement Date	Claimed Matchable	Invalid Claims	Gross Matchable	Payment
<u>Detail</u>					
	8 (05/15/2013)	8,939	920	8,019	
	9 (07/15/2013)	1,570	275	1,295	
	10 (08/09/2013)	400	0	400	
	11 (08/30/2013)	1,055	90	965	
	12 (09/20/2013)	200	100	100	
	Total:	<u>12,164</u>	<u>1,385</u>	<u>10,779</u>	
		12,164	1,385	10,779	
Matchable Adjustment:				-	4,855
Adjusted Gross Matchable:				<u>5,924</u>	
<u>Regular Payment Calculation</u>					
Adjusted Gross Matchable:				5,924	
General Regular Matchable:				-	0
Net Matchable: (Threshold Met)				<u>5,924</u>	
Matching Factor:				x	6.0
EXTENDED NET REGULAR PAYABLE: (Limit: 92,400)				<u>35,544</u>	35,544
Total Previous Regular Payable:					-
REGULAR PAYABLE:					<u>65,364</u>
					(29,820)
MAX PAYABLE:					(29,820)
Net Withholding: (See Notes Below)					-
Reserve Amount: (.00 %)					0
Reserve Applied:					-
ADJUSTED AMOUNT ELIGIBLE:					<u>0</u>
					(29,820)
Amount Payable:					0
Penalty Deduction:					-
PAYMENT DUE:					<u>0</u>

New York City Campaign Finance Board
 Campaign Finance Information System
 Detail Payment Report for 2013 Primary Election

Candidate: Whitehead, John C (ID: 802)

Office: City Council

District: 42

Payment and Adjustment History for This Election

<u>Type</u>	<u>Transaction Date</u>	<u>Check No</u>	<u>Amount</u>	<u>Reserve Amount</u>
Previous Payment	08/05/2013		52,292	2,752
Previous Payment	08/15/2013		4,788	252
Previous Payment	08/28/2013		1,083	57
Previous Payment	09/06/2013		7,201	- 3,061
Total:			65,364	0

Net Withholding

Total Withholding:		0
Previous Withholding:	-	0
Previous Unapplied Withholding:	+	0
Net Withholding:		0

Notes

Matchable Adjustment For 5-01 (n)

Withholding

Over Payment Calculation

Adjusted Amount Eligible:		(29,820)
Returned Funds:	+	50
Outstanding Reserve:	+	0
Amount Overpaid:		(29,770)