



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District
Co-Chair: Janet Kilpatrick, Third District

**May 2, 2023
3:00 PM**

VIRTUAL ZOOM WEBINAR MEETING &
LOUIS L. REDDING CITY/COUNTY BUILDING
1ST FLOOR COUNCIL CHAMBERS
800 N. FRENCH STREET, WILMINGTON, DE 19801**

AGENDA

A. Meeting Call to Order

B. Approval of Minutes

C. Review/Discussion of Resolution(s)

R23-__: TO AMEND THE MAINTENANCE DECLARATION FOR THE CASCADES, LOCATED ALONG THE NORTH SIDE OF PULASKI HIGHWAY (US RTE 40), INCLUDING THOSE TAX PARCEL NUMBERS LISTED IN "EXHIBIT A" ATTACHED HERETO Introduced by: Ms. George

R23-__: TO AMEND THE MAINTENANCE DECLARATION FOR PENNFIELD, LOCATED ALONG THE SOUTH SIDE OF PORT PENN ROAD, INCLUDING THOSE TAX PARCEL NUMBERS LISTED IN "EXHIBIT A" ATTACHED HERETO Introduced by: Mr. Bell

D. Review/Discussion of Ordinance(s)

E. Presentations

F. Other

G. Public Comment

H. Adjournment

AGENDA POSTED: APRIL 25, 2023

*The agenda is posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004(e)(2). The meeting may go into Executive Session to address issues that arise at the time of the meeting.

**Under Title 29, Section 10006A of *Delaware Code*, New Castle County Council is holding this meeting as a

telephone and video conference, utilizing  Webinar. In addition, this meeting is open to the public in Council Chambers (800 N. French Street, Wilmington, DE 19801). The link to join the meeting via computer, smart device, or smart phone is : <https://zoom.us/j/377322142> You may also call into the meeting (audio) using the following call in numbers: 1-312-626-6799 or +1-646-558-8656 or +1-346-248-7799 or +1-669-900-9128 or +1-253-215-8782 or +1-301-715-8592. Then enter the Webinar ID: 377 322 142. If you do not have a good connection with one, please try the others. Additional information regarding phone functionality during the meeting is available at: <https://support.zoom.us/hc/en-us/articles/360029527911-Live-Training-Webinars>

Meeting materials, including a meeting agenda, legislation to be addressed during the meeting, and other materials related to the meeting are electronically accessible at <https://www.nccde.org/2351/Agendas-and-Minutes> Members of the public joining the meeting may be provided an opportunity to make comments in real time. A comment period will be administered by a moderator to ensure everyone may have an opportunity to comment.

If permitted to comment, you will not be able to speak until called upon by the moderator. For those appearing virtually, there are functions in the program that allow you to do this. Please see the link in the previous paragraph.

Introduced by: Ms. George
Date of introduction: May 9, 2023

RESOLUTION NO. 23-

**TO AMEND THE MAINTENANCE DECLARATION FOR THE CASCADES,
LOCATED ALONG THE NORTH SIDE OF PULASKI HIGHWAY (US RTE 40),
INCLUDING THOSE TAX PARCEL NUMBERS LISTED IN “EXHIBIT A”
ATTACHED HERETO**

WHEREAS, that certain approximately 77.64 acres located along the north side of Pulaski Highway (US Route. 40), being further identified by those New Castle County Tax Parcel Numbers listed in Exhibit A attached hereto (the “Property”), is the subject of a Record Major Subdivision Plan, recorded in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware (the “Recorder’s Office”) on August 27, 2020 as Instrument No. 20200827-0072811, which subdivided the Property into 113 residential lots (“Cascades”); and

WHEREAS, that certain Maintenance Declaration for The Cascades, dated August 29, 2018 and recorded September 6, 2018 in the Recorder’s Office as Instrument No. 20180906-0045599 (the “Maintenance Declaration”), was established to provide for the maintenance of private open spaces and other common facilities for The Cascades; and

WHEREAS, the Property is the subject of a subdivision plan for The Cascades, Application No. 2022-0407-A, prepared by Becker Morgan Group, dated May 9, 2022, as may be amended from time to time, to be recorded in the Recorder’s Office, which still proposes 113 age-restricted residential lots (the “Subdivision”); and

WHEREAS, U.S. Home, LLC, a Delaware limited liability company (as successor-in-interest by conversion of U.S. Home Corporation, a Delaware corporation) D/B/A LENNAR (the “Applicant”) proposes to amend the Maintenance Declaration in connection with the Subdivision and to clarify that ownership, assessments and maintenance of the clubhouse lot will be controlled by that certain Service Declaration for The Cascades, to be recorded in the Recorder’s Office, and not by the Declaration; and

WHEREAS, pursuant to New Castle County Code Section 40.31.130.I, where an amendment of a declaration is established solely to provide for the maintenance of private open spaces and other common facilities for subdivisions, it shall be exempt from the public hearing process and the County Council of New Castle County may adopt this Resolution approving the amendment to the Maintenance Declaration upon receipt of a favorable recommendation from the Department of Land Use and the Office of Law; and

WHEREAS, the Department of Land Use and the Office of Law reviewed the proposed Amendment to the Maintenance Declaration for The Cascades, attached hereto as Exhibit B, and recommend in favor of the proposed change.

NOW, THEREFORE, BE IT RESOLVED by the County Council of New Castle County that the County Council of New Castle County hereby approves the Amendment to the Maintenance Declaration for Cascades, attached hereto as Exhibit B, pursuant to New Castle County Code Section 40.31.130.I, which provides that an amendment of a declaration established solely to provide for the maintenance of private open spaces and other common facilities for subdivisions is exempt from the public hearing process and that the President of County Council of New Castle County is hereby authorized to execute the said Amendment to the Maintenance Declaration for The Cascades upon receipt of a favorable recommendation from the Department of Land Use and the Office of Law, which approval has been provided, evidencing Council's approval of the same.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: This resolution will have no immediately discernible fiscal impact.

Exhibit A

Tax Parcel List

LOT NUMBER	TAX PARCEL NUMBER
1	11-025.20-198
2	11-025.20-199
3	11-025.20-200
4	11-025.20-201
5	11-025.20-202
6	11-025.20-203
7	11-025.20-204
8	11-025.20-205
9	11-025.20-206
10	11-025.20-207
11	11-025.20-208
12	11-025.20-209
13	11-025.20-210
14	11-025.20-211
15	11-025.20-212
16	11-025.20-213
17	11-025.20-214
18	11-025.20-215
19	11-025.20-216
20	11-025.20-217
21	11-025.20-218
22	11-025.20-219
23	11-025.20-220
24	11-020.40-035
25	11-020.40-036
26	11-020.40-037
27	11-020.40-038
28	11-020.40-039
29	11-020.40-040
30	11-020.40-041
31	11-020.40-042
32	11-020.40-043
33	11-020.40-044
34	11-020.40-045
35	11-020.40-046
36	11-020.40-047
37	11-020.40-048
38	11-020.40-049
39	11-020.40-050
40	11-020.40-051
41	11-020.40-052
42	11-020.40-053
43	11-020.40-054
44	11-020.40-055
45	11-020.40-056
46	11-020.40-057

47	11-020.40-058
48	11-020.40-059
49	11-020.40-060
50	11-020.40-061
51	11-020.40-062
52	11-020.40-063
53	11-020.40-064
54	11-020.40-065
55	11-020.40-066
56	11-020.40-067
57	11-020.40-068
58	11-020.40-069
59	11-020.40-070
60	11-020.40-071
61	11-020.40-072
62	11-020.40-073
63	11-020.40-074
64	11-020.40-075
65	11-020.40-076
66	11-020.40-077
67	11-020.40-078
68	11-020.40-079
69	11-020.40-080
70	11-020.40-081
71	11-020.40-082
72	11-020.40-083
73	11-020.40-084
74	11-020.40-085
75	11-020.40-086
76	11-020.40-087
77	11-020.40-088
78	11-020.40-089
79	11-020.40-090
80	11-020.40-091
81	11-020.40-092
82	11-020.40-093
83	11-020.40-094
84	11-020.40-095
85	11-020.40-096
86	11-020.40-097
87	11-020.40-098
88	11-025.20-221
89	11-025.20-222
90	11-025.20-223
91	11-025.20-224
92	11-025.20-225
93	11-025.20-226
94	11-020.40-099
95	11-020.40-100
96	11-020.40-101
97	11-020.40-102

98	11-020.40-103
99	11-020.40-104
100	11-020.40-105
101	11-020.40-106
102	11-020.40-107
103	11-025.20-227
104	11-025.20-228
105	11-025.20-229
106	11-025.20-230
107	11-025.20-231
108	11-025.20-232
109	11-020.40-108
110	11-020.40-109
111	11-020.40-110
112	11-020.40-111
113	11-020.40-112
STREET RIGHT OF WAY	11-025.00-006
PRIOPSP	11-025.20-234
PRIOPSP	11-025.20-235
PRIOPSP	11-020.40-115
PRIOPSP	11-020.40-114
PRIOPSP	11-020.40-113

Exhibit B

[INSERT AMENDMENT TO MAINTENANCE DECLARATION OF THE CASCADES]

Tax Parcel Nos.: See Attached Exhibit A

Prepared by and Return to:
Lauren R. Otto, Esquire
Tarabicos, Grosso & Hoffman, LLP
One Corporate Commons
100 W. Commons Boulevard
Suite 415
New Castle, Delaware 19720

FIRST AMENDMENT TO MAINTENANCE DECLARATION

THIS FIRST AMENDMENT TO MAINTENANCE DECLARATION FOR THE CASCADES (this “Amendment”) is hereby made this 20th day of March, 2023 (“Effective Date”), by **U.S. HOME, LLC**, a Delaware limited liability company (as successor-in-interest by conversion of **U.S. HOME CORPORATION**, a Delaware corporation) **D/B/A LENNAR** (“Declarant”), and as Power of Attorney for **WANDA VIZCARRONDO, MATHEW ZOLLARS, EVELYN NADINE ZOLLARS, ERIC HICKS, DIANE HICKS, BERNITA L. JOHNSON, KELLIE ANN SMITH, WANDA D. WILSON, BARBARA JEAN SCOTT-WORTHAM, HERMAN WILSON JR., ROBERT R. ROBINSON, 275 SUGAR MAPLE LLC, CANDACE MASON, THOMAS MASON, ROBERT J. YAGUSESKY, MICHAEL VERNON BENNETT, PAULA ANTONETTA BENNETT, MATTHEW J. CARTER, MASAKO T. CARTER, WEI CHOU HAN, LI-CHUN HAN, FLORANN BURNETT, MICHAEL DAVIS, JR., CONSTANCE DAVIS, VAN ART MOORE, DIANE LYNN MOORE, CEDRIC STROTHER, JACQUELINE STROTHER, MARK FRANCELLO, SHELLEY FRANCELLO, MARILYN R. KARAM, NANDAKUMAR SREEDHARA MENON, SUSAN LAWRIE MENON, RICHARD CATES, KATHLEEN CATES, CHAD ALLEN, COLLEEN ALLEN, DONNA ALLEN, LINYU XU, TYRONE NEAL, AND MARYANNE E. NEAL** (collectively, the “Homeowners”); see Exhibit B for additional information regarding the Homeowners’ Power of Attorney.

WHEREAS, Declarant is the owner of certain tracts, parcels and pieces of land located in New Castle County, Delaware (the “Property”), which has been approved for development pursuant to that certain Record Major Subdivision Plan for The Cascades, prepared by Becker Morgan Group, dated October 5, 2017, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware (the “Recorder’s Office”) as Instrument Number 20200827-0072811, to be amended by the to-be recorded plan (hereinafter referred to as the “Original Plan”);

WHEREAS, the Original Plan is intended to be superseded by that certain Resubdivision Record Plan for the Cascades, Application No. 2022-0407-A, prepared by Becker Morgan Group, dated May 9, 2022, to be recorded in the Recorder’s Office (the “Plan”);

WHEREAS, the Property is subject to that certain Maintenance Declaration for The Cascades, dated August 29, 2018, and recorded in the Recorder’s Office on September 6, 2018, as Instrument Number 20180906-0045599 (the “Original Declaration”), as may be amended from time-to-time, which imposes, *inter alia*, certain covenants relating to the maintenance of the Common Facilities, including, without limitation, the clubhouse (the “Clubhouse”), as seen on the Original Plan;

WHEREAS, pursuant to Section 6 of the Original Declaration, the Original Declaration may be amended with the consent of 66% of the Lot Owners and of the New Castle County Council;

WHEREAS, as of the date of execution of this Amendment, Declarant owns 89 of the 113 (or approximately 79%) Lots in The Cascades and therefore, it may amend the Original Declaration with consent of the New Castle County Council;

WHEREAS, notwithstanding its right to amend the Original Declaration without additional Lot Owner consent, Declarant has obtained executed and recorded powers of attorney from the other 24 Lot Owners authorizing Declarant to amend the Original Declaration on their behalf to the extent necessary; and

WHEREAS, Declarant now desires to remove the Clubhouse from the Common Facilities and make clear that the ownership, assessment and maintenance of the Clubhouse shall be controlled by the terms and conditions of that certain Service Declaration for The Cascades, intended to be recorded on or about the same time as this Amendment (the "Service Declaration"), all as more fully set forth herein below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Declarant agrees that the Original Declaration shall be amended as follows:

1. Section 5(f) of the Original Declaration is hereby amended and restated as follows:

"Common Facilities" shall mean and refer to all private open space designated on the Plan and also any common areas or common amenities that may be depicted on the Plan including, but not limited to, the storm water management facilities including recharge systems, if any, fire hydrants, sidewalks, active or passive open space or recreation facilities, landscaping within open areas, common parking areas, rights-of-way (other than DelDOT's), easements located within the private open space, monuments and markers, and all improvements now and hereafter located thereon. Notwithstanding the foregoing, Common Facilities shall not include the clubhouse and associated parking areas, including the lot on which the clubhouse sits, the pool, retaining wall, and other related improvements located thereon, the ownership, assessment and maintenance of which shall be controlled exclusively by the terms and conditions of the Service Declaration for The Cascades, intended to be recorded on or about the same time as this Amendment."

2. These covenants and restrictions shall be taken to be real covenants running with the land and binding thereon perpetually.

3. Except as set forth in this Amendment, the Original Declaration is hereby ratified and confirmed and remains in full force and effect. To the extent that any terms or provisions of the Original Declaration are inconsistent with the terms or provisions set forth in this Amendment, such terms and provisions shall be deemed superseded by this Amendment to the extent of such inconsistency.

4. This Amendment is governed by the laws of the State of Delaware, exclusive of the conflict of laws provisions thereof.

5. Any capitalized terms not otherwise defined in this Amendment shall have the meanings and definitions as those contained in the Original Declaration.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has executed this Amendment under its hand and seal the day and year first above written.

Witness:

[Signature]

U.S. HOME, LLC D/B/A LENNAR, a
Delaware limited liability company (with respect to
Lots owned by U.S. HOME, LLC D/B/A
LENNAR)

By: [Signature] (SEAL)

Name: Michael Tench Tilghman

Title: Vice President

Witness:

[Signature]

U.S. HOME, LLC D/B/A LENNAR, a
Delaware limited liability company (with respect to
Lots owned by Homeowners)

By: [Signature] (SEAL)

Name: Michael Tench Tilghman

Title: Vice President

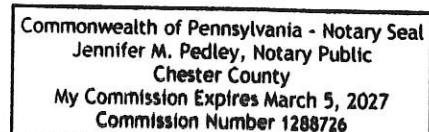
As Attorney-in-Fact, pursuant to Irrevocable Power
of Attorney Coupled with an Interest

STATE OF Pennsylvania)
~~DELAWARE~~) SS:
COUNTY OF Chester)
~~NEW CASTLE~~)

BE IT REMEMBERED, that on this 20th day of March, 2023, personally
appeared before me, the Subscriber, a Notary Public for the State and County aforesaid,
Michael Tench Tilghman, Vice President of U.S. HOME, LLC D/B/A
LENNAR, a Delaware limited liability company, party to this Declaration, known to me
personally to be such, and acknowledged this Declaration to be his act and deed and the act and
deed of said company.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

[Signature]
Notary Public
Name: Jennifer M. Pedley
My Commission Expires: 3/5/2027



Tax Parcel No.:
11-025.00-006


20180906-0045599
Pages: 8 F: \$0.00
09/06/18 12:27:39 PM
T20180031673
Michael E. Kozikowski
New Castle Recorder MISC

Prepared by and Return to:
John E. Tracey, Esquire
Young, Conaway, Stargatt & Taylor, LLP
Rodney Square North
1000 N. King Street
Wilmington, Delaware 19801

**MAINTENANCE DECLARATION
FOR
THE CASCADES**

THIS DECLARATION, made this 29 day of August, 2018, by **ROUTE 40 ENTERPRISES, LLC**, a Delaware limited liability company, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of those certain parcels of land situate in Pencader Hundred, New Castle County, State of Delaware, containing approximately 77.64 acres, more or less, as shown on the Record Major Subdivision Plan for The Cascades, New Castle County Department of Land Use Application No. 2016-0558-S, prepared by Becker Morgan Group, dated October 5, 2017, as may be amended from time-to-time, (hereinafter referred to as the "Plan") and intended to be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, which land is designated for, among other things, the construction of a residential community of 115 age-restricted detached and attached dwelling units with appurtenant private open spaces and Common Facilities as shown on the Plan, and any recorded amendments thereto (the "Subdivision"). The Subdivision is more particularly bounded and described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, Declarant desires to impose upon said lands and to bind itself, its successors, assigns, and the future owners of said parcel of land, to certain covenants.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the Declarant does covenant and declare that it shall hold and stand seized of all those certain parcels of land situate in Pencader Hundred, New Castle County and State of Delaware, as it appears on the Plan under and subject to the following covenants and agreements which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns, for the benefit of all owners of lots appearing on the Plan, and for the benefit of New Castle County.

1. In order that the private open spaces, stormwater management and Common Facilities, as set forth on the Plan, shall be maintained according to the provisions of New Castle County, State of Delaware and Federal law, there shall be organized as provided in

Paragraph 2 hereof, a maintenance corporation, hereinafter referred to as the "Corporation," whose members shall be the record owners of Lots shown on the Plan.

- (a) The purchaser of any Lot, by the acceptance of a deed to said land, obligates and binds himself or herself, his or her heirs and assigns to become a member of the aforesaid Corporation and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by membership in said Corporation.
- (b) Each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Corporation, when necessary, annual assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided; provided, that all assessments must be fixed at a uniform rate for all lots. However, such obligation to pay any annual assessment or charge to the Corporation shall not commence until such time that the Board of Directors of the Corporation is comprised of homeowners of The Cascades. The Owner of any Lot agrees, at the time of settlement for the purchase of said Lot, to sign a confession of judgment obligating him or her to pay to the Corporation his or her share of the costs associated with the maintenance of the Common Facilities within the Subdivision. The assessments levied by the Corporation shall be used exclusively for the purpose of maintaining said open space and Common Facilities and any other allowable purpose as stated in the Bylaws of the Corporation.
- (c) An annual assessment, if necessary, shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting, and any special assessments shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose.
- (d) Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the legal rate per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or Common Facilities or abandonment of his or her lot.
- (e) It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the land in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in said tract the Owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to

pay said assessments to the Corporation, including prior unpaid assessments.

- (f) By his or her acceptance of title, each Owner shall be held to vest in the Corporation the right and power in its own name to take and prosecute all actions or suits, legal, equitable or otherwise, which may be, in the opinion of the Corporation, necessary or advisable for the collection of such assessments.
 - (g) Said assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided, that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure, of such mortgage or mortgages, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages; and provided, further, that such charges accruing after the sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.
 - (h) Declarant hereby grants to New Castle County (the "County"), its successors and assigns, the right, privilege and authority to enter upon said premises and maintain said open space and Common Facilities at the expense of the Owners of said Lots. In the event that New Castle County elects to maintain the Common Facilities as set forth above, all expenses of maintenance shall be assessed pro rata against the Owners of each Lot, and shall be collectible by New Castle County, as provided in the New Castle County Code, Chapter 40, Article 27, or in the manner set forth above in relation to collection by the Corporation. The provisions of paragraph 1(g) above notwithstanding, any lien for such expenses or maintenance asserted by the County and filed with the Recorder of Deeds in accordance with the New Castle County Code shall be a lien from the time of recording and shall have priority in relation to other liens, either general or special, including mortgages and other liens according to the time of recording of such liens in the proper office, as in the said Section provided.
2. Declarant shall incorporate under the laws of the State of Delaware, prior to the issuance of a certificate of occupancy for any Lot as shown on the Plan, a nonprofit corporation to be known as a "maintenance corporation" for the benefit of all Owners, which maintenance corporation shall be charged with the duty of

maintaining said open space and Common Facilities in the condition required by the New Castle County Code.

3. These covenants and restrictions shall be taken to be real covenants running with the land and binding thereon perpetually.
4. Declarant, for itself, its successors and assigns, grants to the Lot Owners the reasonable use of all the Common Facilities as shown on the Plan in common with others entitled thereto forever. Each Lot Owner, by acceptance of a deed, grants to all other Lot Owners, their guests, invitees and licensees the free and uninterrupted use of all the Common Facilities and grants to the Corporation the right to come upon any Lot Owner's Lot for purposes of maintaining the Common Facilities.
5. The following definitions are applicable hereto:
 - (a) "Corporation" shall mean and refer to the "maintenance corporation", its successors and assigns, and to the proper-named corporate entity to be formed as provided hereunder.
 - (b) "Lot" shall mean and refer to each of the residential lots as shown on the Record Major Subdivision Plan of The Cascades and any recorded amendments thereto.
 - (c) "Member" shall mean and refer to every person or entity that holds membership in the Corporation.
 - (d) "Owner" shall mean and refer to the record owner of a fee simple title to any of the Lots as shown on the Plan of The Cascades and any recorded amendments thereto.
 - (e) "Declarant" shall mean and refer to Route 40 Enterprises, LLC, a Delaware limited liability company, its respective successors and assigns.
 - (f) "Common Facilities" shall mean and refer to all private open space designated on the record plan and also any common areas or common amenities that may be depicted on the record plan including, but not limited to, the stormwater management facilities, including recharge systems, if any, fire hydrants, sidewalks, active or passive open space or recreation facilities, the clubhouse and associated parking areas, landscaping within open areas, common parking areas, rights-of-way (other than DelDOT's), easements located within the private open space, monuments and markers, and all improvements now and hereafter located thereon.
6. The foregoing covenants may not be modified, amended or altered in whole or in part, except by the consent of 66% of the Lot Owners and of the New Castle County Council. Provided, however, that this Maintenance Declaration may be amended

with the consent of New Castle County Council and without the consent of the Lot Owners where said amendment would expand this Declaration to encompass additional lots depicted on a contiguous Record Minor/Major Land Development Plan, or an enlarged or re-subdivided Record Major Subdivision Plan of The Cascades and where said amendment(s) would be necessary so that the newly expanded Maintenance Declaration would fully comply with the then current New Castle County Code.

IN WITNESS WHEREOF, the said ROUTE 40 ENTERPRISES, LLC, a Delaware limited liability company, has caused its name to be hereunto set as of the day and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE OF

WITNESS

ROUTE 40 ENTERPRISES, LLC



By:  (SEAL)
Robert Allen, Authorized Signer

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 23 day of August, 2018, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Robert Allen, Authorized Signer of Route 40 Enterprises, LLC, a Delaware limited liability company, a party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed, and the authorized act and deed of said entity.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

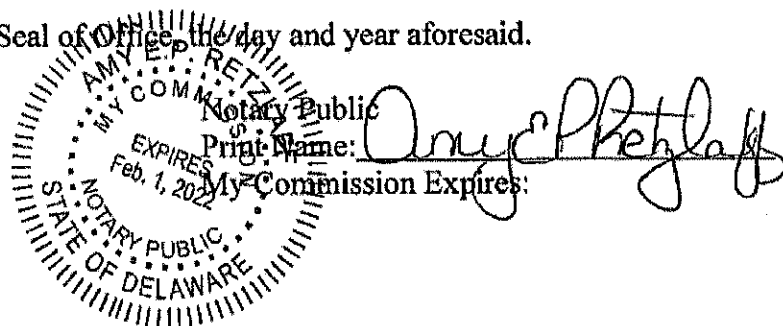


EXHIBIT A

THE CASCADES SUBDIVISION

OWNER: Route 40 Enterprises, LLC

TAX MAP NO.: 1102500006

Overall Boundary - 77.50 ACRES ±

All that certain lot, piece or parcel of land, situated in Pencader Hundred, New Castle County, State of Delaware, lying on the northerly side of Pulaski Highway (U.S. Rt. 40) and westerly side of Pleasant Valley Road, being bounded on the south in part by lands now or formerly of Glasgow Ventures, LLC and Pulaski Highway, on the west by Barrington Subdivision (M.F. 12961), on the north by lands of unknown ownership and on the east in part by lands now or formerly of Julio Vazquez, lands of Delta M. Moses, lands of Beatrice Stevens, lands of Thomas C. Loftis, Jr., lands of Brad & Dianne Smith, lands of Larry W. & Pamela L. Williams, lands of AAC Contracting LLC, lands of Federal Home Loan Mortgage Corporation and Pleasant Valley Road and being the overall boundary as shown on a plan entitled "The Cascades – Major Subdivision Record Plan" as prepared by Becker Morgan Group, Inc., dated October 5, 2018 and to be recorded in the New Castle County Recorder of Deeds Office, being more particularly described as follows to wit:

Beginning at a set concrete monument at a corner for the northerly right of way line of Pulaski Highway and this parcel and in line with lands of Glasgow Ventures, LLC, said point being a short distance west of the intersection of Pulaski Highway and Pleasant Valley Road; thence leaving said point of beginning and running with the northerly right of Pulaski Highway the following three courses and distances 1) along the arc of a circle curving to the left with a radius of 3863.22 feet and an arc length of 537.06 feet, chord bearing and distance of said arc being North 82°29'40" West 536.63 feet to set concrete monument; thence 2) North 86°28'38" West 471.71 feet to a set concrete monument; thence 3) along the arc of a circle curving to the right with a radius of 8550.92 feet and an arc length of 701.68 feet, chord bearing and distance of said arc being North 84°07'35" West 701.48 feet to a set concrete monument at a corner for this parcel and in line with Barrington Subdivision (M.F. 12961); thence with said Barrington Subdivision 4) North 06°22'02" West, passing over a found concrete monument at a distance of 2089.66 feet and continuing a total distance of 2095.67 feet to a point at a corner for this parcel and lands of unknown ownership; thence with said lands of unknown ownership the following two courses and distances 5) North 84°24'57" East 358.56 feet to a point; thence 6) North 85°04'22" East 789.44 feet to the east bank of canal and at a corner for this parcel and in line with lands Julio Vazquez; thence with said east bank of canal and lands of Vazquez the following six courses and distances 7) South 14°43'19" East 128.61 feet to a point; thence 8) South 14°57'11" East 100.24 feet to a point; thence 9) South 23°23'23" East 67.65 feet to a point; thence 10) South 02°19'05" East 55.07 feet to a point; thence 11) South 25°36'34" East 45.50 feet to a point; thence 12) South 16°48'01" East 62.45 feet to a point; thence continuing with east bank of canal and in part with said lands of Vazquez and lands of Delta M. Moses 13) South 09°56'24" East 101.90 feet to a point; thence continuing with east bank of canal and in part with said lands of Moses and lands

of Beatrice Stevens 14) South 15°23'17" East 162.78 feet to a point; thence continuing with east bank of canal and in part with said lands of Stevens and lands of Thomas C. Loftis, Jr. 15) South 09°58'00" East 62.39 feet to a point; thence continuing with east bank of canal and said lands of Loftis, Jr. the following five courses and distances 16) South 29°53'36" East 50.76 feet to a point; thence 17) South 43°15'56" East 98.63 feet to a point; thence 18) South 34°42'41" East 65.87 feet to a point; thence 19) South 50°30'16" East 92.02 feet to a point; thence 20) South 42°34'12" East 101.49 feet to a point; thence continuing with east bank of canal and in part with said lands of Loftis, Jr. and lands of Brad & Dianne Smith 21) South 42°35'47" East 125.53 feet to a point; thence continuing with east bank of canal and in part with said lands of Smith and lands of Larry W. & Pamela L. Williams 22) South 38°00'33" East 63.83 feet to a point; thence continuing with east bank of canal and said lands Williams the following two courses and distances 23) South 50°50'22" East 41.95 feet to a point; thence 24) South 38°23'02" East 75.02 feet to a point; thence continuing with east bank of canal and in part with said lands of Williams and lands of AAC Contracting LLC 25) South 34°07'06" East 74.66 feet to a point; thence continuing with east bank of canal with said lands of AAC Contracting 26) South 19°34'04" East 52.62 feet to a point; thence continuing with east bank of canal and in part with said lands of AAC Contracting and lands of Federal Home Loan Mortgage Corporation 27) South 27°27'00" East 44.56 feet to a point; thence continuing with east bank of canal and said lands of Federal Home Loan the following nine courses and distances 28) South 15°10'27" East 121.55 feet to a point; thence 29) South 25°10'05" East 30.75 feet to a point; thence 30) South 19°40'31" West 30.55 feet to a point; thence 31) South 19°20'23" East 28.75 feet to a point; thence 32) South 06°33'54" East 38.87 feet to a point; thence 33) South 55°08'17" East 13.29 feet to a point; thence 34) South 34°40'57" East 75.41 feet to a point; thence 35) South 05°06'26" East 37.32 feet to a point; thence 36) South 00°28'58" West 50.47 feet to a point at a corner for this parcel and the easterly right of way for Pleasant Valley Road; thence with said right of way for Pleasant Valley Road the following three courses and distances 37) South 05°25'05" East 150.49 feet to a point; thence 38) South 24°10'05" East 77.78 feet to a point; thence 39) South 05°25'04" East 132.39 feet to a point at a corner for this parcel and lands of Glasgow Ventures LLC; thence with said lands of Glasgow Ventures the following four courses and distances 40) North 77°07'48" West 119.63 feet to a found iron rod with cap; thence 41) South 06°33'43" East 37.84 feet to a found iron rod with cap; thence 42) North 78°09'23" West 31.62 feet to a found iron rod with cap; thence 43) South 06°33'43" East 163.37 feet to the point and place of beginning, containing 77.50 acres of land be the same, more or less.



Department of Land Use

April 20, 2023

In reply, refer to:
2023-0155-MD
Maintenance Declaration Amendment for Cascades Subdivision

Nellie Hill, Clerk of Council
County Council of New Castle County
800 French Street, City/County Building
Wilmington, DE 19801

James W. Bell, New Castle County Councilman
800 French Street, City/County Building
Wilmington, DE 19801

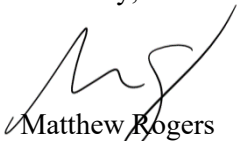
Dear Ms. Hill and Councilman Bell:

Pursuant to Section 40.31.130.I (Deed Restriction Change Exceptions) of the New Castle County Code, both the Department of Land Use and Office of Law are required to review proposed amendments to maintenance declarations of private open space, common facilities, cross access easements for the development. D/B/A LENNAR has been working with Peter A. Yingst, Esq., to amend the Maintenance Declaration for The Cascades, dated August 29, 2018.

The Department received a request from Peter A. Yingst on behalf of D/B/A LENNAR to amend the maintenance declaration to no longer include the clubhouse lot as part of the "Common Facilities" (as defined in the Maintenance Declaration) and to clarify that ownership, assessments and maintenance of the clubhouse lot will be controlled by that certain Service Declaration for The Cascades consistent with the subdivision plan (Application 2022-0407-S).

Both the Office of Law and the Department of Land Use have reviewed the proposed amendment to the maintenance declaration for The Cascades Subdivision and recommend that County Council adopt a resolution approving such amendment. The applicant should contact New Castle County Council to prepare and schedule the appropriate resolution for approval.

Sincerely,



Matthew Rogers
Planner III

Enclosure

CC: Adam Singer, Esq.
Richard Hall, General Manager
Antoni Sekowski, Assistant General Manager
Janet Vinc, Planning Manager
Peter Yingst, Esq.

RESOLUTION NO. 23-

**TO AMEND THE MAINTENANCE DECLARATION FOR PENNFIELD, LOCATED
ALONG THE SOUTH SIDE OF PORT PENN ROAD, INCLUDING THOSE TAX
PARCEL NUMBERS LISTED IN “EXHIBIT A” ATTACHED HERETO**

WHEREAS, that certain approximately 111.43 acres located along the south side of Port Penn Road, being further identified by those New Castle County Tax Parcel Numbers listed in Exhibit A attached hereto (the “Property”), was previously the subject of a Major Subdivision Plan, recorded January 24, 2018 as Instrument No. 20180124-00397, which subdivided the Property into 137 residential lots, which plan was amended by a Minor Land Development Plan, recorded March 17, 2020 as Instrument No. 20200317-0022095 (“Pennfield”); and

WHEREAS, a certain Maintenance Declaration, dated November 28, 2017 and recorded December 11, 2017 in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware, as Instrument No. 20171211-0064382 (the “Declaration”), was established to provide for the maintenance of private open spaces and other common facilities for Pennfield; and

WHEREAS, the Property is the subject of a Resubdivision Plan, which still proposes 137 age-restricted residential lots (the “Resubdivision”); and

WHEREAS, McKee Builders, LLC (the “Applicant”) proposes to amend the Declaration in connection with the Resubdivision and to further ensure that the Declaration is compliant with Delaware law; and

WHEREAS, pursuant to New Castle County Code Section 40.31.130.I, where an amendment of a declaration is established solely to provide for the maintenance of private open spaces and other common facilities for subdivisions, it shall be exempt from the public hearing process and the County Council of New Castle County may adopt this Resolution approving the amendment to the Declaration upon receipt of a favorable recommendation from the Department of Land Use and the Office of Law; and

WHEREAS, the Department of Land Use and the Office of Law reviewed the proposed Amendment to the Maintenance Declaration for Pennfield, attached hereto as Exhibit B, and recommend in favor of the proposed change.

NOW, THEREFORE, BE IT RESOLVED by the County Council of New Castle County that the County Council of New Castle County hereby approves the Amendment to the Maintenance Declaration for Pennfield, attached hereto as Exhibit B, pursuant to New Castle County Code Section 40.31.130.I, which provides that an amendment of a declaration established solely to provide for the maintenance of private open spaces and other common facilities for subdivisions is exempt from the public hearing process and that the President of County Council of New Castle County is hereby authorized to execute the said Amendment upon receipt of a favorable recommendation from the Department of Land Use and the Office of Law, which approval has been provided, evidencing Council’s approval of the same.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: This resolution will have no immediately discernible fiscal impact.

Exhibit A

TAX PARCEL NO. 13-008.20-069
TAX PARCEL NO. 13-008.20-070
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TAX PARCEL NO. 13-009.30-217

TAX PARCEL NO. 13-009.30-218

Exhibit B

Tax Parcel Nos.: See “Exhibit A”

Prepared by and Return to:
Peter A. Yingst, Esquire
Tarabicos, Grosso & Hoffman, LLP
One Corporate Commons
100 W. Commons Boulevard
Suite 415
New Castle, Delaware 19720

**AMENDED AND RESTATED MAINTENANCE DECLARATION
FOR PENNFIELD**

THIS AMENDED AND RESTATED MAINTENANCE DECLARATION (this “**Amendment**”), made this ____ day of _____, ____, by **RICHLAND PARTNERSHIP**, a Delaware general partnership (hereinafter referred to as “Declarant”).

WHEREAS, Declarant is the owner of those certain parcels of land situate in St. Georges Hundred, New Castle County, and State of Delaware, together consisting of approximately 111.43 acres of land, more or less, as shown on the Record Resubdivision Plan for Pennfield to be recorded in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware, prepared by Morris & Ritchie Associates, Inc., dated June 17, 2021, last revised _____, ____, as the same may further be revised or amended (the “Plan”), which land is designated for the construction of one hundred thirty-seven (137) residential dwelling Lots (as defined below) and associated private open space and appurtenant Common Facilities (as defined below) as shown on the Plan, and any recorded amendments thereto (the “Subdivision” or “Pennfield”), which Subdivision is an open-space planned community under the provisions of DUCIOA (as defined below) and is more particularly bounded and described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, Pennfield will be constructed on a Phase-by-Phase basis (said “Phases” being shown on an Open Space Management Plan for Pennfield and defined below) in accordance with New Castle County Code, Chapter 40, Article 27 and DUCIOA (if DUCIOA is not in conflict with New Castle County Code) and, as such, legal transfer of the private open space and appurtenant Common Facilities will likewise be transferred on a Phase-by-Phase basis; and

WHEREAS, the Declarant desires to amend and restate that certain Maintenance Declaration for Pennfield, recorded on December 11, 2017 in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware as Instrument No. 20171211-0064382 (the “Original Maintenance Declaration”), in its entirety, in order to provide for the orderly and proper maintenance of the common facilities located in Pennfield, by the creation of the Corporation (as defined below) hereunder; and

WHEREAS, Declarant desires to impose upon said lands and to bind itself, its successors, and assigns, who is the Owner (as defined below) of said parcel of land, to certain covenants.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant does covenant and declare that it shall hold and stand seized of all that parcel of land situate in St. Georges Hundred, New Castle County and State of Delaware, as it appears on the Plan, under and subject to the following covenants and agreements, which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns, which covenants and agreements shall amend and restate the Original Maintenance Declaration in its entirety, such that the Original Maintenance Declaration shall be of no further force and effect, for the benefit of all Owners of Lots appearing on said Plan, and for the benefit of New Castle County.

1. In order that the Common Facilities, as hereinafter defined and as set forth on said Plan, shall be maintained according to the provisions of New Castle County, State and federal law, there shall be organized as provided in Paragraph 2 hereof, a maintenance corporation, hereinafter referred to as the “Corporation,” whose Members (as defined below) shall be the record Owners of Lots shown on said Plan.

(a) The purchaser of any Lot of land by the acceptance of a deed to said land, obligates and binds himself or herself, his or her heirs and assigns to become a Member of the aforesaid Corporation and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by membership in said Corporation. Every Owner of a Lot upon becoming legal title owner of such Lot shall be a Member of the Corporation provided, however, that any such person or group of persons, association, corporation, limited liability company, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Member solely on

account of such interest. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Upon any Owner ceasing to hold legal title to a Lot, such Owner shall no longer be a Member of the Corporation with respect to such Lot and the successor Owner of such Lot shall become a member of the Corporation as provided above.

(b) Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(c) Each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Corporation, when necessary, annual assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided; provided that all assessments must be fixed at a uniform rate for all Lots. However, such obligation to pay any annual assessment or charge to said Corporation shall not commence until the expiration of the Declarant Control Period (as defined below); should the Declarant so desire, this Declarant Control Period may apply on a Phase-by-Phase basis and the obligation to pay any annual assessment or charge to said Corporation shall not commence until the expiration of the Declarant Control Period for the Phase in which the Owner's Lot is located. The Owner of any Lot agrees, at the time of settlement for the purchase of said Lot, to sign a confession of judgment obligating him or her to pay to the Corporation his or her share of the costs associated with the maintenance of the Common Facilities within the Subdivision. The assessments levied by the Corporation shall be used exclusively for the purpose of maintaining the Common Facilities and any other allowable purpose as stated in the Bylaws of said Corporation.

(d) As required by § 81-303 of DUCIOA, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the total number of Lots that may be created in Pennfield to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the Board (as defined below) shall be elected by Owners other than the Declarant and, unless such timing coincides with an annual meeting, the president of the Corporation shall call a special meeting for such election. By way of example, after twenty-five percent (25%) of the total number of Lots that may be created in Pennfield have been conveyed to Owners, the Board shall be expanded by the Declarant to four (4) members, at least one (1) of whom shall be elected by Owners, in order to comply with DUCIOA. Also as required by § 81-303 of DUCIOA, not later than sixty (60) days after conveyance of fifty percent (50%) of the total

Lots that may be created in Pennfield to Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the Board shall be elected by Owners other than the Declarant and, unless such timing coincides with an annual meeting, the president shall call a special meeting for such election. By way of example, after fifty percent (50%) of the total number of Lots that may be created in Pennfield have been conveyed to Owners, the Board shall be expanded by the Declarant to five (5) members, at least two (2) of whom shall be elected by Owners, in order to comply with DUCIOA. Upon the termination of the Declarant Control Period, as it relates to the entire Subdivision, the Owners shall elect the Board and the Board, by majority vote and provided the Declarant did not already expand the Board as described above, may expand the Board to no more than eight (8) members. Following the termination of the Declarant Control Period, elections of the Board shall occur annually at the annual meeting of the Members.

(e) An annual assessment, if necessary, shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting, and any special assessments shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose.

(f) Preparation of the annual budget, in which there shall be established the annual assessment of each Owner, must be approved in accordance with § 81-324 of DUCIOA. The Board shall prepare the proposed annual budget of the Corporation at least sixty (60) days before the beginning of each fiscal year and set a date for a meeting of the Corporation. After the termination of the Declarant Control Period, as it relates to the entire Subdivision, the Board shall cause a summary of the proposed budget, and the amount of the assessments to be levied against each Lot for the following year, along with notice of the meeting of the Corporation to consider ratification of the budget not less than fourteen (14) or more than sixty (60) days after providing such summary, to be delivered to each Owner within thirty (30) days after adoption of the proposed budget. Unless at such meeting a majority of all Owners reject the proposed budget, such proposal budget is ratified as the budget for such fiscal year, whether or not a quorum is present at such meeting of the Corporation. Notwithstanding the foregoing, however, in the event that the membership disapproves the budget or the Board fails for any reason to determine the budget for any fiscal year of the Corporation, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding fiscal year shall continue for the succeeding fiscal year.

(g) Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 5.25 percent per annum, or the maximum rate legal rate, whichever is higher, and the Corporation may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or Common Facilities or abandonment of his or her Lot.

(h) By his or her acceptance of title, each Owner shall be held to vest in the Corporation the right and power in its own name to take and prosecute all actions or suits, legal, equitable or otherwise, which may be, in the opinion of the Corporation, necessary or advisable for the collection of such assessments.

(i) It is expressly agreed that the assessments referred to above shall be a continuing lien pursuant to DUCIOA § 81-316 on the land in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in said tract the Owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the Corporation, including prior unpaid assessments.

(j) Said assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided, that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure, of such mortgage or mortgages, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages; and provided, further, that such charges accruing after the sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.

(k) Declarant hereby grants to New Castle County, its successors and assigns, the right, privilege and authority to enter upon said premises and maintain said open space and Common Facilities at the expense of the Owners of said Lots. In the event that New Castle County elects to maintain the Common Facilities as set forth above, all expenses of maintenance shall be assessed pro rata against the Owners of each Lot, and shall be collectible by New Castle County as provided in New Castle County Code, Chapter 40, Article 27, or in the manner set forth above in relation to collection by the Corporation, or as otherwise provided by applicable law. Any lien for such expenses or maintenance asserted by the County shall have priority in relation to other liens, either general or special, including mortgages and other liens to the fullest extent permitted by law.

2. Declarant shall incorporate under the laws of the State of Delaware, prior to the recordation of the Plan, a nonprofit corporation to be known as a “maintenance corporation” for the benefit of all Owners, which maintenance corporation shall be charged with the duty of maintaining the Common Facilities in the condition required by the New Castle County Code.

3. These covenants and restrictions shall be taken to be real covenants running with the land and binding thereon perpetually.

4. Declarant, for itself, its successors and assigns, grants to the Owners the free and uninterrupted use of all the Common Facilities as shown on the Plan in common with others entitled thereto forever. Each Owner, by acceptance of a deed, grants to all other Owners, their guests, invitees and licensees the free and uninterrupted use of all the Common Facilities and grants to the Corporation the right to come upon any Owner's Lot for purposes of maintaining the Common Facilities.

5. The following definitions are applicable hereto:

(a) “**Corporation**” shall mean and refer to the Pennfield Maintenance Corporation, its successors and assigns, and to the proper-named corporate entity to be formed as provided hereunder.

(b) “**Board**” shall mean and refer to a board of directors of natural individuals of the number stated herein and in the Bylaws, who shall manage and administer the business, operation and affairs of the Corporation on behalf of the Owners.

(c) **“Lot”** shall mean and refer to each of the lots as shown on the Plan.

(d) **“Member”** shall mean and refer to every person or entity who holds membership in the Corporation.

(e) **“Owner”** shall mean and refer to the record owner of a fee simple title to any of the Lots as shown on the said Plan.

(f) **“Declarant”** shall mean and refer to the undersigned parties hereto, and their respective successors and assigns.

(g) **“Declarant Control Period”** shall mean and refer to a period beginning on the date of this Amendment and ending on the earliest of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created within the Subdivision (or within a particular Phase) to Owners other than the Declarant, (b) two (2) years after Declarant has ceased to offer Lots for residential purposes for sale in the ordinary course of business, or (c) the day the Declarant, after giving written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Corporation. If the Declarant shall so desire, this definition of Declarant Control Period shall be applied on a Phase-by-Phase basis.

(h) **“DUCIOA”** shall mean and refer to the Delaware Uniform Common Interest Ownership Act, 25 Del. C. § 81-101 et seq., as amended from time to time.

(i) **“Common Facilities”** shall mean and refer to all private open space designated on the Plan and also any common areas or common amenities that may be depicted on the Plan, including, but not limited to, active open spaces, streets (unless accepted for dedication by DelDOT), curbs, sidewalks, storm water management facilities including recharge systems, parks, recreational facilities, fire hydrants, landscaping, parking areas, rights-of-way, easements, monuments and markers, and all improvements now and hereafter located thereon.

(j) **“Phase”** shall mean and refer to each of the phases as shown on an Open Space Management Plan.

6. The foregoing covenants may not be modified, amended or altered in whole or in part, except by the consent of at least sixty-seven percent (67) of the Owners and of the New Castle County Council. Provided, however, that this Amendment may be further amended with the consent of New Castle County Council and without the consent of the Owners where said

amendment would expand this Amendment to encompass additional lots depicted on a contiguous lands as shown on a Record Minor/Major Land Development Plan, or an enlarged or re-subdivided plan for Pennfield, and where said amendment(s) would be necessary so that the new expanded Maintenance Declaration would fully comply with the then current New Castle County Code.

7. Unless sooner terminated by a recorded instrument signed by the Declarant, Declarant reserves the following rights for the period from the date of this Amendment through the date that is thirty (30) years thereafter (individually and collectively, the “Special Declarant Rights”): (a) the right to complete or make improvements indicated on the Plan or on any other approved site plan or plats for the Subdivision; (b) the right to maintain sales offices, parking areas, management offices, storage sheds/trailers, and models on the Common Facilities, as may be located and/or relocated by Declarant from time-to-time in Declarant’s sole discretion; (c) the right to maintain signs on the Common Facilities to advertise the sales of homes; (d) the right to conduct sales business and construction activities on the Common Facilities; and (e) the right to use and permit others to use, easements through the Common Facilities as may be reasonably necessary for the purpose of discharging the Declarant’s obligations under DUCIOA and this Amendment.

8. The Declarant shall have the right to assign all or any part of its rights and duties under this Amendment and the Bylaws and any other instrument entered into by it in connection with the governance of the Subdivision (the “Governing Documents”) to any other party or parties who intend(s) to carry out the development of all or any part of the Subdivision. In the case of the assignment of all of Declarant’s rights and duties, the Declarant shall, to the extent permitted by § 81-304 of DUCIOA, be relieved of all further liabilities and obligations under the Governing Documents (except for any rights and duties which Declarant may have as an Owner in respect of any Lot which it may continue to own, which shall be unaffected thereby) as of the effective date of any assignment, and the party to whom the assignment shall have been made shall thereafter become and be treated as the “Declarant” for all purposes of the Governing Documents.

9. Not later than the first conveyance of a unit to a person other than Declarant, the Board shall obtain or cause to be obtained “broad-form” comprehensive public liability and property damage insurance that meets the requirements of DUCIOA § 81-313(h), covering liability for loss or damage to persons or property in those amounts, against those risks and from those insurance companies which the Board shall from time to time determine, but in no event less than

Two Million Dollars (\$2,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. This insurance shall include protection against liability for damage to the property of others, and any other risks which are customarily covered in similar policies for associations similar to the Corporation, including, without limitation, liabilities arising out of or in connection with the Corporation's maintenance responsibility hereunder. The Board shall also obtain fidelity insurance for the Board and all other persons with access to Corporation funds.

10. Declarant declares and reserves for itself, its successors and assigns, and the Corporation, in perpetuity, the easements and licenses appurtenant to or included in the Subdivision, or to which any portion of the Subdivision may become subject to, the recording data for which is shown on the Plan.

11. The Original Maintenance Declaration is hereby amended and restated and shall be of no further force and effect.

IN WITNESS WHEREOF, each of the parties named below, by its duly authorized signatory, has executed under seal and acknowledged this instrument, as of the day and year first above written.

DECLARANT:
RICHLAND PARTNERSHIP

By: _____(SEAL)
Name: Jaymes Lester
Title: General Partner

STATE OF DELAWARE :
: **SS.**

COUNTY OF NEW CASTLE :

On this, the ____ day of _____, ____, before me, a Notary Public, the undersigned officer, personally appeared Jaymes Letser, who acknowledged himself to be General Partner of Richland Partnership, a Delaware general partnership, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Tax Parcel No.:
13-009.00-057


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Pages: 5 F: \$0.00
12/11/17 02:38:32 PM
T20170043543
Michael E. Kozikowski
New Castle Recorder MISC

Prepared by and Return to:
Richard A. Forsten, Esquire
Saul Ewing Arnstein & Lehr, LLP
1201 N. Market Street
Suite 2300
P. O. Box 1266
Wilmington, Delaware 19899-2366

**MAINTENANCE DECLARATION
FOR
PENNFIELD**

THIS DECLARATION, made this 28th day of November, 2017, by **RICHLAND PARTNERSHIP**, a Delaware general partnership, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of that certain parcel of land situate in Appoquinimink Hundred, New Castle County, State of Delaware, containing approximately 110.10 acres, more or less, as shown on the Record Major Subdivision Plan for Pennfield, prepared by Apex Engineering, Inc. and dated August 11, 2017, as may be amended from time-to-time, (hereinafter referred to as the "Plan") and intended to be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, which land is designated for the construction of a residential community of 137 dwelling units with appurtenant private open spaces and Common Facilities as shown on the Plan, and any recorded amendments thereto (the "Subdivision"); and

WHEREAS, Declarant desires to impose upon said lands and to bind itself, its successors, assigns, and the future owners of said parcel of land, to certain covenants.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the Declarant does covenant and declare that it shall hold and stand seized of all those certain parcels of land situate in Appoquinimink Hundred, New Castle County and State of Delaware, as it appears on the Plan under and subject to the following covenants and agreements which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns, for the benefit of all owners of lots appearing on the Plan, and for the benefit of New Castle County.

1. In order that the private open spaces, stormwater management and Common Facilities, as set forth on the Plan, shall be maintained according to the provisions of New Castle County, State of Delaware and Federal law, there shall be organized as provided in Paragraph 2 hereof, a maintenance corporation, hereinafter referred to as the "Corporation," whose members shall be the record owners of Lots shown on the Plan.

- (a) The purchaser of any Lot, by the acceptance of a deed to said land, obligates and binds himself or herself, his or her heirs and assigns to become a member of the aforesaid Corporation and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by membership in said Corporation.
- (b) Each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Corporation, when necessary, annual assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided; provided, that all assessments must be fixed at a uniform rate for all lots. However, such obligation to pay any annual assessment or charge to the Corporation shall not commence until such time that the Board of Directors of the Corporation is comprised of homeowners of Pennfield. The Owner of any Lot agrees, at the time of settlement for the purchase of said Lot, to sign a confession of judgment obligating him or her to pay to the Corporation his or her share of the costs associated with the maintenance of the Common Facilities within the Subdivision. The assessments levied by the Corporation shall be used exclusively for the purpose of maintaining said open space and Common Facilities and any other allowable purpose as stated in the Bylaws of the Corporation.
- (c) An annual assessment, if necessary, shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting, and any special assessments shall be set by a majority vote of the Members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose.
- (d) Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at twelve percent (12%) rate per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or Common Facilities or abandonment of his or her lot.
- (e) It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the land in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in said tract the Owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the Corporation, including prior unpaid assessments.

- (f) By his or her acceptance of title, each Owner shall be held to vest in the Corporation the right and power in its own name to take and prosecute all actions or suits, legal, equitable or otherwise, which may be, in the opinion of the Corporation, necessary or advisable for the collection of such assessments.
 - (g) Said assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided, that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure, of such mortgage or mortgages, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages; and provided, further, that such charges accruing after the sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.
 - (h) Declarant hereby grants to New Castle County (the "County"), its successors and assigns, the right, privilege and authority to enter upon said premises and maintain said open space and Common Facilities at the expense of the Owners of said Lots. In the event that New Castle County elects to maintain the Common Facilities as set forth above, all expenses of maintenance shall be assessed pro rata against the Owners of each Lot, and shall be collectible by New Castle County, as provided in the New Castle County Code, Chapter 40, Article 27, or in the manner set forth above in relation to collection by the Corporation. The provisions of paragraph 1(g) above notwithstanding, any lien for such expenses or maintenance asserted by the County and filed with the Recorder of Deeds in accordance with the New Castle County Code shall be a lien from the time of recording and shall have priority in relation to other liens, either general or special, including mortgages and other liens according to the time of recording of such liens in the proper office, as in the said Section provided.
- 2. Declarant shall incorporate under the laws of the State of Delaware, prior to the issuance of a certificate of occupancy for any Lot as shown on the Plan, a nonprofit corporation to be known as a "maintenance corporation" for the benefit of all Owners, which maintenance corporation shall be charged with the duty of maintaining said open space and Common Facilities in the condition required by the New Castle County Code.
 - 3. These covenants and restrictions shall be taken to be real covenants running with the land and binding thereon perpetually.

4. Declarant, for itself, its successors and assigns, grants to the Lot Owners the uninterrupted use of all the Common Facilities as shown on the Plan in common with others entitled thereto forever. Each Lot Owner, by acceptance of a deed, grants to all other Lot Owners, their guests, invitees and licensees the free and uninterrupted use of all the Common Facilities and grants to the Corporation the right to come upon any Lot Owner's Lot for purposes of maintaining the Common Facilities.
5. The following definitions are applicable hereto:
 - (a) "Corporation" shall mean and refer to the "maintenance corporation", its successors and assigns, and to the proper-named corporate entity to be formed as provided hereunder.
 - (b) "Lot" shall mean and refer to each of the lots as shown on the Record Major Subdivision Plan of Pennfield and any recorded amendments thereto.
 - (c) "Member" shall mean and refer to every person or entity that holds membership in the Corporation.
 - (d) "Owner" shall mean and refer to the record owner of a fee simple title to any of the lots as shown on the Plan of Pennfield and any recorded amendments thereto.
 - (e) "Declarant" shall mean and refer to Richland Partnership, a Delaware general partnership, its successors and assigns.
 - (f) "Common Facilities" shall mean and refer to all private open space designated on the record plan and also any common areas or common amenities that may be depicted on the record plan including, but not limited to, the stormwater management facilities, including recharge systems, if any, fire hydrants, sidewalks, active or passive open space or recreation facilities, landscaping within open areas, common parking areas, rights-of-way (other than DelDOT's), easements located within the private open space, monuments and markers, and all improvements now and hereafter located thereon.
6. The foregoing covenants may not be modified, amended or altered in whole or in part, except by the consent of 66% of the Lot Owners and of the New Castle County Council. Provided, however, that this Maintenance Declaration may be amended with the consent of New Castle County Council and without the consent of the Lot Owners where said amendment would expand this Declaration to encompass additional lots depicted on a contiguous Record Minor/Major Land Development Plan, or an enlarged or re-subdivided Record Major Subdivision of Pennfield and where said amendment(s) would be necessary so that the newly expanded Maintenance Declaration would fully comply with the then current New Castle County Code.

IN WITNESS WHEREOF, the said Richland Partnership, a Delaware general partnership, has caused its name to be hereunto set as of the day and year first above written.

**SEALED AND DELIVERED
IN THE PRESENCE OF**

RICHLAND PARTNERSHIP

BY: Jaymes B Lester
Print Name: Jaymes B Lester
Title: G.M.P.

ATTEST: [Signature]
Print Name: Steph C. Woodin
Title: P.E. [Seal]

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 28 day of November, 2017, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Jaymes Lester, General Partner of Richland Partnership, a Delaware general partnership, a party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his/her act and deed and the act and deed of such entity.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Notary Public
Print Name: Cynthia Diane DePace
My Commission Expires: 5/22/21

CYNTHIA DIANE DEPACE
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 22, 2021



Department of Land Use

April 20, 2023

In reply, refer to:
2023-0155-MD
Maintenance Declaration Amendment for Pennfield Subdivision

Nellie Hill, Clerk of Council
County Council of New Castle County
800 French Street, City/County Building
Wilmington, DE 19801

James W. Bell, New Castle County Councilman
800 French Street, City/County Building
Wilmington, DE 19801

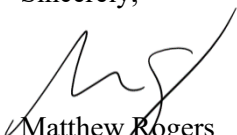
Dear Ms. Hill and Councilman Bell:

Pursuant to Section 40.31.130.I (Deed Restriction Change Exceptions) of the New Castle County Code, both the Department of Land Use and Office of Law are required to review proposed amendments to maintenance declarations of private open space, common facilities, cross access easements for the development. Richland Partnership has been working with Peter A. Yingst, Esq. to amend the Maintenance Declaration for the Pennfield Development, dated June 17, 2021.

The Department received a request from Peter Yingst on behalf of Richland Partnership to amend the maintenance declaration to make the declaration consistent with the Pennfield Development Resubdivision Plan (Application 2021-0395-S) and Delaware State Law.

Both the Office of Law and the Department of Land Use have reviewed the proposed amendment to the maintenance declaration for the Pennfield Development and recommend that County Council adopt a resolution approving such amendment. The applicant should contact New Castle County Council to prepare and schedule the appropriate resolution for approval.

Sincerely,



Matthew Rogers
Planner III

Enclosure

CC: Adam Singer, Esq.
Richard Hall, General Manager
Antoni Sekowski, Assistant General Manager
Janet Vinc, Planning Manager
Peter Yingst, Esq.