



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

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

January 2, 2024
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)

R24-: TO AMEND THE MAINTENANCE DECLARATION FOR WHISPERING WOODS BY AN AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS OF WHISPERING WOODS; APPLICATION NO. 2023-0413; COUNCIL DISTRICT 6 Introduced by: Mr. Carter

D. Review/Discussion of Ordinance(s)

°23-084: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC"), ARTICLE 25 ("DESIGN") REGARDING HAMLET AND VILLAGE DESIGN AND LOCATION Introduced by: Mr. Tackett, Ms. Kilpatrick

°23-095: AMENDING NEW CASTLE COUNTY CODE CHAPTER 40 (THE "UNIFIED DEVELOPMENT CODE") TO ESTABLISH A PROTECTED OPEN SPACE ZONING DISTRICT Introduced by: Mr. Carter, Ms. Durham, Mr. Toole, Mr. Cartier

SUBSTITUTE NO. 1 TO °23-104: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC"), ARTICLE 3 ("USE REGULATIONS"), ARTICLE 5 ("SITE CAPACITY AND CONCURRENCY CALCULATIONS"), ARTICLE 8 ("NONCONFORMING SITUATIONS"), ARTICLE 26 ("MODIFICATION OF STANDARDS"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION"), ARTICLE 33 ("DEFINITIONS"), AND APPENDIX 7 ("GUIDING PRINCIPLES FOR DEVELOPMENT"), REGARDING DEVELOPMENT, REDEVELOPMENT, LARGE INDUSTRIAL STRUCTURES AND HEAVY RETAIL AND SERVICE USES, AND UPDATING THE GUIDING PRINCIPLES TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN Introduced by: Mr. Tackett, Ms. Kilpatrick

E. Presentations

- F. Other
- G. Public Comment
- H. Adjournment

AGENDA POSTED: December 19, 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.

Prime Sponsor(s): Mr. Carter
Date of Introduction: January 9, 2024

RESOLUTION NO. 24-

**TO AMEND THE MAINTENANCE DECLARATION FOR WHISPERING WOODS BY AN
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS OF WHISPERING WOODS;
APPLICATION NO. 2023-0413; COUNCIL DISTRICT 6**

1 **WHEREAS**, Summit Land, LLC, a Delaware limited liability company, caused that
2 certain Maintenance Declaration for Whispering Woods dated July 6, 2017, to be recorded
3 in the Office of the Recorder of Deeds in and for New Castle County, Delaware (the
4 “Recorder’s Office”), as Instrument No. 20170710-0034310 (the “Maintenance
5 Declaration”) in conjunction with an application to develop a parcel of land situate in St.
6 Georges Hundred, New Castle County, State of Delaware, containing approximately
7 114.53 +/- acres of land (the “Property”), as shown on that Record Major Subdivision Plan
8 for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated April 1, 2017,
9 and of record in the Recorder’s Office as Instrument No. 20170830-0044757 (as
10 subsequently modified, the “Plan”); and
11

12 **WHEREAS**, the Maintenance Declaration provided for a maintenance corporation
13 to be established in order to ensure that the private open spaces, stormwater management
14 facilities, and common facilities of Whispering Woods shown on the Plan (collectively, the
15 “Common Facilities”) be maintained according to the provisions of New Castle County,
16 State of Delaware, and Federal law; and
17

18 **WHEREAS**, pursuant to that certain Deed dated February 8, 2018, recorded in the
19 Recorder’s Office as Instrument No. 20180208-0006709, Whispering Woods Homes LLC,
20 a Delaware limited liability company (the “Declarant”) became the legal and equitable owner
21 of the Property; and
22

23 **WHEREAS**, Declarant recorded that certain Declaration of Covenants, Conditions,
24 Easements and Restrictions dated August 26, 2019, in the Recorder’s Office as Instrument
25 No. 20190828-0068076 (the “Original Declaration”), without the New Castle County’s
26 knowledge or approval, which Original Declaration provides for the Whispering Woods
27 Community Association, a Delaware nonstock corporation (the “Community Association”),
28 to be the governing body for all of the owners (the “Owners”) of Lots and Dwellings (as such
29 terms are defined in the Original Declaration, and as depicted on the Plan) responsible for
30 certain maintenance and other obligations regarding such Lots and the exteriors of such
31 Dwellings, and the maintenance, repair, replacement, management, operation, and
32 administration of the “Community Facilities” (defined in the Original Declaration as any
33 portion of the Property not included in any Lot, to the extent not dedicated to public use,
34 and as depicted on the Plan); and

35 **WHEREAS**, Declarant constructed the residential subdivision known as “Whispering
36 Woods” on the Property, including the Dwellings and Community Facilities, in accordance
37 with the Plan; and
38

39 **WHEREAS**, the Whispering Woods Maintenance Corporation, a Delaware nonstock
40 corporation (the “Maintenance Corporation”), was incorporated on November 23, 2021, by
41 the filing of that certain Certificate of Incorporation of Whispering Woods Maintenance
42 Corporation with the Secretary of State of the State of Delaware for the general purpose of
43 providing for the maintenance of the Common Facilities; and
44

45 **WHEREAS**, the Owners (in their capacities as members of the Community
46 Association and as members of the Maintenance Corporation), the Executive Board of the
47 Community Association, and the Board of Directors of the Maintenance Corporation,
48 approved the merger of the Community Association with and into the Maintenance
49 Corporation, with the Maintenance Corporation being the surviving entity, pursuant to and
50 in accordance with the provisions of that certain Plan and Agreement of Merger between
51 Whispering Woods Community Association (a Delaware Non-Stock Corporation) and
52 Whispering Woods Maintenance Corporation (a Delaware Non-Stock Corporation) dated
53 as of December 22, 2022, and the General Corporation Law of the State of Delaware (the
54 “Merger”); and
55

56 **WHEREAS**, the Merger was completed on February 15, 2022, by the filing of a
57 certificate of merger with the Secretary of State of the State of Delaware, with the
58 Maintenance Corporation being the surviving corporation; and
59

60 **WHEREAS**, following the Merger, the Owners (in their capacities as members of the
61 Maintenance Corporation) and the Board of Directors of the Maintenance Corporation, duly
62 approved (i) a Certificate of Amendment to the Certificate of Incorporation of the
63 Maintenance Corporation, pursuant to which the name of the Maintenance Corporation was
64 changed to Whispering Woods Community Association (the “Certificate of Amendment”)
65 and (ii) those certain Amended and Restated Bylaws of the Whispering Woods Community
66 Association dated July 7, 2023 (the “Bylaws”); and
67

68 **WHEREAS**, the Certificate of Amendment was filed with the Secretary of State of
69 the State of Delaware by the Maintenance Corporation on March 17, 2023, and the name
70 of the Maintenance Corporation was thereby changed to Whispering Woods Community
71 Association; and
72

73 **WHEREAS**, the Community Association recorded the Bylaws in the Recorder’s
74 Office as Instrument No. 20230714-0046566 (thereby amending and restating those certain
75 Bylaws of the Whispering Woods Maintenance Corporation dated November 23, 2021, and
76 recorded in the Recorder’s Office as Instrument No. 20211201-0137041); and

77 **WHEREAS**, the Owners and the Executive Board of the Community Association
78 (formerly the Board of Directors of Maintenance Corporation), duly approved an Amended
79 and Restated Declaration of Covenants, Conditions, Easements and Restrictions of
80 Whispering Woods, attached hereto as Exhibit "A", (the "Amended and Restated
81 Declaration"), in order to provide for the Community Association to be the sole governing
82 body for all of the Owners responsible for certain maintenance and other obligations
83 regarding Lots and the exteriors of Dwellings, in addition to being responsible for the
84 maintenance, repair, replacement, management, operation, and administration of the
85 Community Facilities; and
86

87 **WHEREAS**, pursuant to the Bylaws, (i) the purpose of the Community Association
88 is to maintain, regulate, and administer the Property in accordance with the Amended and
89 Restated Declaration for the use, benefit, and enjoyment of the Owners and lawful
90 occupiers of the Dwellings in the Community, and (ii) the Executive Board of the Community
91 Association has all lawful powers and duties necessary for the proper conduct and
92 administration of the affairs of the Community Association and the operation, maintenance,
93 repair, and replacement of the Community Facilities, Dwellings, and Lots, as set forth in the
94 Amended and Restated Declaration (collectively, the "Expanded Duties"); and
95

96 **WHEREAS**, the Amended and Restated Declaration would functionally amend the
97 Maintenance Declaration, as the Maintenance Declaration created and defined the
98 Maintenance Corporation (now the Community Association) as being organized solely for
99 the maintenance of the Common Facilities, and the Amended and Restated Declaration
100 would expand the purpose, powers, and duties of the of Community Association to include
101 the Expanded Duties, in accordance with the Bylaws; and
102

103 **WHEREAS**, the Department of Land Use (the "Department") and the Office of Law
104 reviewed the proposed Amended and Restated Declaration, and recommend in favor of
105 the proposed changes; and
106

107 **WEHREAS**, *New Castle County Code* Section 40.31.130.G provides that upon
108 receipt of a recommendation report from the Department and Office of Law, County Council
109 shall schedule a hearing and render a decision by resolution. A simple majority or seven
110 (7) votes shall be required to approve the resolution when the Department recommends
111 approval. A two thirds (2/3) majority or nine (9) votes shall be required to approve the
112 resolution when the Department recommends disapproval; and
113

114 **WHEREAS**, pursuant to Section 40.31.130.I, an amendment of a declaration of
115 restrictions established solely to provide for the maintenance of open spaces and other
116 common facilities shall be exempt from the public hearing process.

117 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of New Castle
118 County that County Council hereby approves the Amended and Restated Declaration of
119 Covenants, Conditions, Easements and Restrictions of Whispering Woods, attached hereto
120 as Exhibit "A", having received a favorable recommendation from the Department and the
121 Office of Law and being a deed restriction exempt from the public hearing process as an
122 amendment of a declaration of restrictions established solely to provide for the maintenance
123 of open spaces and common facilities pursuant to Section 40.31.130.I of the *New Castle*
124 *County Code*.

(continued on next page)

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this resolution

EXHIBIT "A"

Amended and Restated Declaration of Covenants, Conditions, Easements and
Restrictions of Whispering Woods

(attached)

ENCLOSURE 1

Recorded Maintenance Declaration for Whispering Woods

20170710-0034310
Pages: 8 F: \$140.00
07/10/17 10:18:37 AM
T20170023245
Michael E. Kozikowski
New Castle Recorder MISC

Tax Parcel No.:
13-012.00-042

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
WHISPERING WOODS**

THIS DECLARATION, made this 6th day of July, 2017, by SUMMIT LAND, LLC, a Delaware limited liability company, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of those certain parcels of land situate in St. Georges Hundred, New Castle County, State of Delaware, containing approximately 114.53 acres, more or less, as shown on the Record Major Land Development Plan for Whispering Woods, New Castle County Department of Land Use Application No. 2015-0777-S, prepared by Morris & Ritchie Associates, Inc., dated March 16, 2016, 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 178 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 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, 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 Whispering Woods. 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 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 residential lots as shown on the Record Major Land Development Plan of Whispering Woods 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 Whispering Woods and any recorded amendments thereto.
 - (e) "Declarant" shall mean and refer to Summit Land, 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, streets, unless accepted for dedication by DelDOT, curbs, sidewalks, stormwater management facilities, including recharge systems, if any, parks, recreational facilities, fire hydrants, the clubhouse and associated parking areas (including the entirety of overflow parking located partially within dedicated rights-of-way), landscaping within open areas, 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 Whispering Woods 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.

Signature page follows

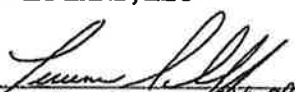
IN WITNESS WHEREOF, the said SUMMIT LAND, LLC, a Delaware limited liability company, has caused its name to be hereunto set as of the day and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE OF

WITNESS

SUMMIT LAND, LLC

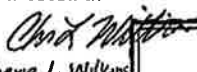


By:  (SEAL)
Print Name: Torrence Schiff
Title: Managing Member

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

BE IT REMEMBERED, that on this 12th day of April, 2017, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Torrence Schiff, Managing Member of Summit Land, 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.

Notary Public 
Print Name: Cherie L Wilkins
My Commission Expires:

CHERIE L WILKINS NOTARY PUBLIC STATE OF DELAWARE MY COMMISSION EXPIRES ON October 20, 2019
--

Exhibit A

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS



ALL that certain farm or tract of land situate in St. Georges Hundred, New Castle County, Delaware and being more particularly bounded and described in accordance with a survey made the 28th day of April, A.D. 2016, as follows, to wit:

BEGINNING for the same at a point in the south right-of-way line of the State Highway leading from McDonough to Mount Pleasant, being shown on the State of Delaware State Highway Department Construction Plan for Contract Number 66-01-008, being Road 15 as shown thereon and also known as Boyds Corner Road, said point being the beginning of the first or South eight degrees and fifty-two minutes East, twenty nine hundred fifty-seven foot line of that tract of land conveyed by and described in a deed dated September 9, 1964 from Frances M. North, Widow to James D. Deeney and Mary E. Deeney, his wife, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Record Book Q-73, Page 536, said point also being at the intersection of the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road and the first or south ten degrees East one hundred and eighty-two and eight-tenths perch line of Parcel No. 1 of those tracts or parcels of land conveyed by and described in a deed dated April 6, 2006 from Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Frank Rausch, Jr., Settlor, as amended, and Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Margaret A. Rausch, Settler, as amended, to Rausch Enterprises, L.L.C., a Delaware limited liability company, and recorded in the aforesaid Office of the Recorder of Deeds of New Castle County in Record Number 20060411-0034295, thence leaving the said right-of-way line of Road 15 – Boyds Corner Road and binding of the said first line of the first mentioned conveyance to Deeney, and the remainder of the first line of the second mentioned conveyance to Rausch Enterprises, L.L.C., as now surveyed, with all bearings herein being referred to the Delaware State Plane Coordinate System (NAD'83/COORS11)

1. South 18° 02' 43" East 2958.09 feet to a point at the end of the sixth or South 83° 58' 44" West, 1009.62 foot line of Parcel No. 3 of all those certain lots, pieces or parcels of land conveyed by and described in a deed dated December 22, 1975 from Bronislaw Koper, Widower to Delmarva Power and Light Company, a corporation of the State of Delaware, and recorded in the aforesaid Office of the Recorder of Deeds for New Castle County in Record Book S-91, Page 330, thence binding on the second line of the aforesaid conveyance to Deeney and reversely on the said sixth line of the last mentioned conveyance to Delmarva Power and Light Company,
2. North 83° 58' 20" East 1009.63 feet, thence binding reversely on the fifth, fourth and third lines of Parcel No. 3 of said conveyance to Delmarva Power and Light Company, which lines are said to be the division lines of said Delmarva Power and Light Company and the lands of Deeney, the following three (3) courses, viz:
3. South 15° 28' 21" West 363.00 feet,

3445-A Box Hill Corporate Center Drive, Abingdon, MD 21009 (410) 515-9000 Fax: (410) 515-9002 www.mragta.com

Abingdon, MD ♦ Baltimore, MD ♦ Laurel, MD ♦ Towson, MD ♦ Georgetown, DE ♦ New Castle, DE ♦ Sterling, VA ♦ Raleigh, NC
(410) 515-9000 (410) 835-5050 (410) 792-9782 (410) 821-1880 (302) 865-5734 (302) 326-2200 (703) 674-0161 (984) 200-2103

4. South 53° 28' 21" West 264.00 feet, and
5. South 13° 01' 39" East 515.54 feet to a ½" iron pipe heretofore set, said pipe being at the end of the seventh or North 86° 46' 42" East 2147.61 foot line of Parcel No. 2 of the last mentioned conveyance to Delmarva Light and Power Company, thence binding reversely thereon, which line is said to be the division line between the land of the Delmarva Light and Power Company and the land of Deeney,
6. South 86° 46' 22" West 2147.85 feet to a concrete monument heretofore set with a brass disk marked DP&L-PLS135, and to intersect the eighteenth or North four degrees East twenty-four hundred seventy foot line of the first mentioned conveyance herein to Deeney, thence binding on the remainder of said eighteenth and all of the nineteenth lines of said conveyance to Deeney, the two (2) following courses, viz:
7. North 18° 24' 01" West 1154.81 feet to a 2" iron pipe heretofore set, and
8. North 00° 18' 35" West 802.07 feet to a stone heretofore planted, said stone being at the end of the fourth or South 89 degrees 48 minutes 19 seconds West 555.37 foot line of a Confirmatory/Corrective Deed amending the legal description dated October 28, 1993 and recorded among the aforesaid Recorder of Deeds of New Castle County in Record Book 1627 Page 0234, thence binding reversely on said fourth, the third, second and first lines of said conveyance, the following four (4) courses, viz:
9. North 81° 54' 58" East 555.42 feet to a ½" iron pipe heretofore set,
10. North 10° 14' 06" West 1028.05 feet, to a ½" iron pipe heretofore set
11. North 79° 27' 32" East 100.00 feet to a ½" iron pipe heretofore set, and
12. North 12° 03' 36" West 873.39 feet, to a point on the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road, distant South 12° 03' 36" East, 0.14 feet from a ½" iron pipe heretofore set, thence binding on said right –of-way, the following two (2) courses, viz:
13. By a non-tangent curve to the right with a radius of 5699.58 feet and an arc length of 58.85 feet, said curve being subtended by a chord bearing South 87° 36' 27" East 58.85 feet, to a point of tangency, and
14. South 87° 18' 42" East 444.31 feet, to the place of beginning.

CONTAINING 114.5291 acres of land, more or less.

BEING the same and all the land conveyed by and described in a deed from Frances M. North, Widow to James D. Deeney and Mary E. Deeney, his wife, dated September 9, 1964, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Deed Record Q-73, Page 536

SUBJECT TO a Permanent Easement Agreement conveyed by James D. Deeney to The State of Delaware, by and through the Department of Transportation, Division of Highways, dated March 19, 1991 and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Record Book 1164, Page 0289.

ENCLOSURE 2

Recorded Declaration of Covenants, Conditions, Easements and Restrictions of Whispering Woods



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Michael E. Kozikowski T20190038992
New Castle Recorder MISC

New Castle County
Tax Parcel Numbers:
See Exhibit "A" attached hereto

Prepared by and Return to:
Saul Ewing Arnstein & Lehr LLP
P. O. Box 1266
Wilmington, DE 19899

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS OF
WHISPERING WOODS**

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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS (this "Declaration"), is made this 26th day of August, 2019, by Whispering Woods Homes LLC, a Delaware limited liability company ("Declarant").

ARTICLE I - THE PROPERTY

SECTION 1.1. The Property.

Pursuant to that certain Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware (the "Recorder's Office") as Instrument No. 20180208-0006709, Declarant is the legal and equitable owner of those certain lots, pieces or parcels of land bounded and described on Exhibit "A," attached hereto and made a part hereof (the "Property"), being all of the real property shown and identified on that certain Record Major Subdivision Plan for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated April 1, 2017, said plan being recorded in the Recorder's Office as Instrument No. 20170830-0044757, as such plan may be subsequently supplemented or amended from time to time (as supplemented and/or amended, the "Plan"); which property is currently designated for the construction of a residential community to be known as "Whispering Woods" on the Lots (defined below); and open spaces, stormwater management areas, recreational facilities, and improvements and other amenities located within the Property.

ARTICLE II - THE COMMUNITY

SECTION 2.1. Name.

The name by which the Community (defined below) shall hereafter be identified is Whispering Woods.

ARTICLE III - DEFINITIONS

SECTION 3.1. Definitions.

The following terms when used herein and in the Bylaws of the Association are intended to be consistent with the meanings ascribed to them by this Section 3.1.

(a) "Assessments" or "Charges" means those levies, assessments or sums payable by one or more Owners in the Community from time to time upon notification by the Association, as provided herein; the obligation to pay Assessments shall be a covenant running with the land. Each Assessment shall be separate and payable by the Owner.

(b) "Association" or "Community Association" means the Whispering Woods Community Association, a Delaware non-profit corporation, with all Owners being members, which shall have the duties and powers established in this Declaration and in the Bylaws.

(c) "Building" means any structure erected or to be erected on the Property containing one or more Dwellings intended to be used for residential purposes.

(d) "Board" means 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 Association on behalf of the Owners.

(e) "Bylaws" means the governing regulations which are adopted pursuant to this Declaration for the regulation and management of the Property and administration of the Association, including any amendments thereto which may be adopted from time to time.

(f) "Carriage House Dwellings" means the Dwellings erected or to be erected on Lots 15 to 97, all inclusive.

(g) "Common Expenses" means the expenses for which the Owners are liable as provided herein, including, but not limited to:

(i) Expenses of administration, operation, maintenance, repair and replacement of the Community Facilities; and

(ii) Expenses of administration, maintenance, certain insurances, repair and replacement of specific components of the Buildings, Dwellings, and/or Lots; and

(iii) Expenses or liabilities agreed upon as common expenses by the Owners; and

(iv) Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves; and

(v) All other expenses or charges levied or to be levied pursuant to this Declaration or the Bylaws against Owners.

(h) "Common Receipts" means and includes the funds collected from Owners as Assessments for Common Expenses and receipts designated as common by the provisions of this Declaration and the Bylaws.

(i) "Common Surplus" means and includes the excess of all Assessments over all Common Expenses.

(j) "Community" means the planned residential development known as Whispering Woods which has received final approval from New Castle County and which is included within the property and recorded Plan subjected to this Declaration.

(k) "Community Facilities" means any portion of the Property not included in any Lot, to the extent such facilities are neither dedicated nor to be dedicated to the public use, and which are depicted on the Plan, and all other facilities which the Community Association may hereafter own, acquire or construct, including private open space areas, the buffer areas around the perimeter of the Property (whether shown on the Plan or required to be added to the

Community in the future), the storm water management system and detention and/or retention basins and drainage areas, the clubhouse and recreational facilities, swimming pool, street lighting, roads and sidewalks and the shared-use path (all to the extent not dedicated or to be dedicated to the public use).

(l) "Declarant" means Whispering Woods Homes LLC, a Delaware limited liability company.

(m) "Declarant Control Period" means the period beginning on the date of this Declaration and ending on the earliest of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created on the Property 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 Association.

(n) "Detached Dwellings" means the Dwellings erected or to be erected on Lots 1 to 10 and 116 to 167, all inclusive.

(o) "Development Plans" means and refers collectively to the approved site plan and plats for the Property and the Project, including the Plan, as well as any and all amendments, modifications, and extensions thereof as may be made from time to time.

(p) "DUCIOA" means the Delaware Uniform Common Interest Ownership Act, 25 Del. C. § 81-101 et seq., as amended from time to time.

(q) "Dwelling" means a structure which is designed, sold, and occupied as a residence and which is located on the Property subject to this Declaration. Each Owner of each Dwelling shall be subject to all of the rights, privileges and duties as every other Owner of each Dwelling and which are attendant upon each and every Dwelling. References herein to an individual Owner's Dwelling refers collectively to the Dwelling and the Lot on which it is situated.

(r) "Eligible Mortgage Holder" means a holder, insurer or guarantor of a First Mortgage on a Lot or Community Facilities, as applicable, who has submitted a written request for notice from the Association of amendments to this Declaration or the Bylaws, or other significant matters which would affect the interests of the Mortgagee.

(s) "Limited Charges" means those charges which are levied by the Association against one Owner or a group of Owners, but not all Owners for costs incurred by the Association in providing services pursuant to this Declaration, which services are solely for the benefit of the Owners so charged.

(t) "Lot" means any one of, and "Lots" shall mean more than one of, the maximum one hundred and seventy-eight (178) residential dwelling lots in Whispering Woods; and shall not include the Community Facilities, any property dedicated for public use, or other areas of the Property.

(u) "Member" means any Owner or the Declarant who shall be a member of the Association.

(v) "Mortgagee" means the holder of any recorded mortgage encumbering one or more of the Lots or all or any portion of the Community Facilities. "Mortgage," as used herein, shall mean any mortgage held by a Mortgagee. "First Mortgage," as used herein, shall mean a Mortgage with priority over all other Mortgagees. As used in this Declaration, the term "Mortgagee" shall mean any Mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot or all or any portion of the Community Facilities. In the event any Mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the expressions "Mortgagee" and "institutional mortgagee" include the FHA or the VA as the circumstances any require, acting, respectively, through the Federal Housing Commission and the Secretary of Veterans Affairs or through other duly authorized agents.

(w) "Owner" means the record Owner, whether one or more persons or entities, of fee simple title to any Dwelling which is situate within the Property, but excluding those persons having this interest merely as security for the performance of an obligation, and also excluding the Declarant. Multiple Owners of a Dwelling shall together be deemed one Owner for purposes of this Declaration.

(x) "Person" means a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

(y) "Plan" means the Record Major Subdivision Plan for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated April 1, 2017, said plan being recorded in the Recorder's Office as Instrument No. 20170830-0044757, as such plan may be subsequently supplemented or amended from time to time.

(z) "Project" means the residential community, together with the improvements erected and maintained thereon, to be known as "Whispering Woods" consisting of the Lots and the Community Facilities, all to be built on the Property.

(aa) "Property" means and includes the real property, and all easements, rights and appurtenances belonging thereto, which have been submitted from time to time by the Declarant to the provisions of this Declaration. The Property is located entirely in New Castle County in the State of Delaware.

(bb) "Recorded" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

(cc) "Twin Dwellings" means the Dwellings erected or to be erected on Lots 11 to 14, 98 to 115, and 168 to 178, all inclusive, as shown on the Plan.

(dd) "Utilities" shall mean Artesian Water Company, Chesapeake Utilities, New Castle County, their successors in interest, or such other entities that are or may become responsible for collecting, treating and disposing of sanitary sewer wastewater from, or delivering water, propane, and/or natural gas to, Lots or the Community Facilities and improved areas within the Property.

(ee) "Wastewater Agreement" shall mean and refer to, individually and collectively, any easement agreement entered into from time to time by and between New Castle County, Delaware and Declarant, to be Recorded in the Recorder's Office, and any and all other agreements for the Project between Declarant and New Castle County that are binding on Owners other than Declarant with respect to the operation, management, control, repair, maintenance and/or replacement of the waste water system serving the Community, together with any and all amendments thereto and any replacements thereof, together with any collateral documents, permits, approvals, agreements or easements related thereto.

(ff) "Wastewater Service Line" shall mean the pipe, clean-outs, and fittings that lie between the structure foundation or exterior wall on any Lot and the wastewater collection system owned by the applicable Utilities.

ARTICLE IV - PROPERTY SUBJECT TO THIS DECLARATION; RIGHTS OF THE DECLARANT

SECTION 4.1. Applicability.

(a) The Property shall be a planned community under the provisions of DUCIOA that is held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to all of the covenants, conditions, easements and restrictions of this Declaration. All present and future Owners of Dwellings and residents, their guests, licensees, servants, agents, employees, and any other person or persons who shall be permitted to use the Community Facilities described in this Declaration, shall be subject to this Declaration, the Bylaws and any rules and regulations which the Board from time to time shall promulgate in compliance with § 81-320 of DUCIOA to govern the conduct of its members and occupancy of the Property. Ownership or occupancy of any of the Dwellings in the Property shall be conclusively deemed to mean that the Owner or occupant has accepted, ratified and will comply with this Declaration, the Bylaws and the rules and regulations of the Community Association. Owners shall not be permitted to lease their Dwellings unless such leasing is approved by the Board as hereinafter provided. Furthermore, occupancy of Dwellings shall be limited to that class of individuals specified by the zoning regulations of New Castle County regulating use and occupancy of the Property; said class of occupants and all members thereof shall be further subject to and in full compliance with the Federal Fair Housing Act and all amendments thereto. The Property may only be used and developed as an active-adult community for older persons in accordance with the Fair Housing Act provisions, 42 U.S.C. Section 3601, et. seq. In particular, at least one resident of at least eighty percent (80%) of the Dwellings to be constructed and developed on the Property shall be at least fifty-five (55) years of age or older and no person younger than

eighteen (18) years of age shall reside therein on a permanent basis (more than thirty (30) days in any calendar year). The Board may from time to time enact rules to implement and/or enforce the foregoing restrictions (whether more restrictive or otherwise, at the Board's discretion), and shall be empowered to so enact and enforce such restrictions.

(b) In the event of a conflict of interpretation between the provisions set forth in this Declaration and the Bylaws, this Declaration shall govern, except to the extent this Declaration is inconsistent with applicable law.

(c) Unless sooner terminated by a recorded instrument signed by the Declarant, Declarant reserves the following rights for the period from the date of this Declaration through the date that is thirty (30) years thereafter (individually and collectively, the "Special Declarant Rights"):

(i) The right to complete or make improvements indicated on the Development Plans;

(ii) The right to maintain sales offices, parking areas, management offices, storage sheds/trailers, and models on Lots or on the Community Facilities, as may be located and/or relocated by Declarant from time-to-time in Declarant's sole discretion;

(iii) The right to maintain signs on the Property to advertise the sales of homes;

(iv) The right to conduct sales business and construction activities on the Property; and

(v) The right to use and permit others to use, easements through the Community Facilities as may be reasonably necessary for the purpose of discharging the Declarant's obligations under DUCIOA and this Declaration.

SECTION 4.2. Assignment of Declarant's Rights.

The Declarant shall have the right to assign all or any part of its rights and duties under this Declaration and the Bylaws and any other instrument entered into by it in connection with the governance of the Community (the "Governing Documents") to any other party or parties who intend(s) to carry out the development of all or any part of the Community. 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 Dwelling 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. In the case of the assignment of less than all of Declarant's rights and duties, the Declarant shall continue to be responsible for all of its liabilities and obligations as the Declarant under any of the Governing Documents, notwithstanding that the assignee may have agreed with the Declarant to assume responsibility for some part thereof. The assignee shall be entitled to exercise and enjoy all rights assigned to it, subject to any terms, conditions or restrictions applicable thereto set forth in the Governing Documents or in the instrument by which the

assignment is made, in all respects as if it were the Declarant hereunder. No assignment shall be effective until the Declarant and the proposed assignee shall have entered into an instrument expressed to be supplementary to this Declaration which shall set forth the rights and duties of the Declarant to be assigned thereby and all terms, conditions and restrictions applicable to the assignment, and that instrument shall have been Recorded in the Recorder's Office.

SECTION 4.3. Modification of the Plan.

Subject to compliance with DUCIOA and any requirements imposed by any governmental authority having jurisdiction, the Declarant, its successors and/or assigns, shall have the right to make changes in the proposed manner of development of any portion of the Community (whether or not already made subject to this Declaration), including, without limitation: the location, size, type and configuration of any Dwellings to be constructed thereon; the location and layout of all streets, roads, parking areas, sidewalks, walkways and pathways; the nature and location of any Community Facilities, including the layout of any open space and vegetation, buffer areas, the nature and location of all or any portion of the sewer or water systems and configuration of all or any portion of the storm or other drainage or retention systems and the location of all or any portion of the electric transformers, splice poles, street lights, telephone and cable pedestals.

ARTICLE V - THE COMMUNITY FACILITIES

SECTION 5.1. Owners' Easement of Enjoyment.

Every Owner shall have the right of ingress, egress and regress over and the right of enjoyment in and to the Community Facilities which right shall be appurtenant to each Dwelling and shall pass with title to every Dwelling subject, nevertheless, to the following provisions:

(a) The right of the Association to make Assessments for the use of any or all of the Community Facilities, and the obligation of the Association under this Declaration to contribute to the expenses of maintenance, repair, and replacement of the Community Facilities.

(b) The right of the Association to suspend the right of an Owner to use any of the Community Facilities after the Board determines that the Owner has failed to pay in full any Assessment within thirty (30) days of the due date or has violated any of the rules and regulations of the Community Association.

(c) The right of the Association to declare or transfer all or any part of the Community Facilities to any public agency, authority, or Utility for those purposes and subject to those conditions which may be agreed to by the Members.

(d) The free right and privilege of the Declarant at all times hereafter, without let or hindrance, to go upon any and all of the Property, including lands conveyed or developed and to construct, reconstruct, repair, renovate or to correct work to be, or done by Declarant, its agents, servants, workmen or contractors. This right of the Declarant shall expire two (2) years after the conveyance by the Declarant in the ordinary course of business of the last Dwelling to a Dwelling purchaser other than the Declarant.

(e) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, domestic water, storm water and sanitary sewer, gas, drainage, other utility facilities, and any other services provided to any part of the Lots or Community, and the necessary appurtenances to the same. The easement shall run in favor of the Declarant, the Association and the Owner or other entities operating these facilities.

(f) A specific easement in favor of the Declarant, its agents, servants, licensees and invitees for all purposes incident to the process of construction and marketing of Dwellings; provided, however, that this easement shall expire upon conveyance by the Declarant in the ordinary course of business of the last Dwelling to a Dwelling purchaser other than the Declarant.

SECTION 5.2. No Waiver of Use.

No Owner may exempt himself from liability with respect to the payment of Assessments levied by the Association, nor release the Dwelling owned by the Owner from the liens created for non-payment of Assessments by waiver of the use or enjoyment of the Community Facilities, by abandonment of his Dwelling, by any conveyance or covenant severing the rights and benefits from the Dwelling, or otherwise. The obligation to pay Assessments is absolute and unconditional and, in addition to being a covenant running with the land, is a personal obligation of each Owner and shall not be subject to setoffs or counterclaims.

SECTION 5.3. Alterations By Owner.

No Owner may make any changes, additions, improvements, or alterations of any kind or do any work to any of the Community Facilities. No Owner shall impair any easement within the Community Facilities without the unanimous consent of all of the Owners affected thereby. In no event may an Owner make any improvements or alterations which would jeopardize the soundness or safety of any portion of the Property.

SECTION 5.4. Obsolescence.

In the event that the Board shall determine that any Community Facility is obsolete, the Board may call for a vote of the Members to determine whether or not the Community Facility should be demolished and/or replaced. In the event that eighty (80%) percent of the Members and the two-thirds (2/3) of the Eligible Mortgage Holders shall determine that the Community Facility should be demolished and/or replaced, the costs thereof shall be assessed equally against all of the Members.

ARTICLE VI - THE ASSOCIATION

SECTION 6.1. The Community Association.

(a) The Community Association is the governing body for all of the Owners and is responsible for certain maintenance and other obligations regarding Lots and the exterior of Dwellings, the maintenance, repair, replacement, management, operation and administration of

the Community Facilities which includes, among other things, any additions or improvements to the Community Facilities, lawn cutting and fertilization on the Community Facilities, street landscaping and planting of bushes, plants and trees on the Community Facilities.

(b) Nothing herein contained shall be construed so as to preclude the Community Association from delegating the duties described in this Section 6.1 to a manager or agent or to other persons, firms or corporations, subject to the authority of the Community Association.

(c) The Common Expenses incurred or to be incurred for, the utility services, maintenance, repair, replacement, management, operation and use of the Community Facilities, and to Dwellings and/or Lots, and the making of any additions or improvements thereto, shall be as set forth on the attached Component and Responsibility Chart, attached as Exhibit "B" and incorporated herein (the "C&R Chart"), and shall be assessed by the Community Association against and collected from the Owners in accordance with Article IX hereof. In the event of any conflict between this Declaration and the C&R Chart, the terms of the C&R Chart shall control. Expenses benefiting fewer than all of the Dwellings may be assessed exclusively against the Dwellings benefited as Limited Charges.

(d) The time and extent of the foregoing maintenance, repair and replacement obligations of the Community Association shall be determined solely by the Board. All aspects of repair, maintenance and replacement of all interior portions of an Owner's Dwelling shall be the responsibility of the Owner. All maintenance, repair and replacement of portions of the Community Facilities and commonalty pertaining to the Lots and/or Dwellings shall be the responsibility of the Community Association or the Owners, as set forth on the C&R Chart, provided, however, that any costs incurred by the Community Association in connection with any of the foregoing maintenance, repair or replacement items which may arise in connection with the negligence of the Owner(s), or occupant(s) of any particular Dwelling(s) shall be charged as Limited Charges to those Owner(s).

(e) Each Owner shall be authorized to perform maintenance, repair and replacement work on the exterior elements of such Owner's Dwelling as to which the Board is authorized to assess a Limited Charge on the C&R Chart, but only under such rules and regulations as the Board may adopt from time to time for such purpose, which may limit, prohibit or authorize, among other things, the specific elements of the exterior of the Dwellings which may be so maintained, repaired or replaced by the Owner and/or such Owner's contractors; may regulate and specify the standards, colors and products which may be used or installed in course of performance of such maintenance, repair and replacement work; may require notice to the Board of the Owner's intention to perform or have performed such work; or which may address any other matters in connection with such work the Board deems necessary to assure that the exteriors of all of the Dwellings are maintained at all times in good repair and appearance and to professional standards. The Board shall be authorized to include in such rules and regulations provisions to assure the quality of the work performed; to provide for the professional inspection of such work on behalf of the Board and for procedures to address the correction of any non-compliant work; to require the registration of contractors authorized to perform such services who comply with any required industry experience or skill levels, indemnity, licensing and insurance requirements as the Board in the exercise of its judgment may prescribe for the protection of the Association; and to impose and assess charges on the Owner for the monitoring,

inspection and correction of such work as may be required. Nothing set forth in this subsection (e) shall be deemed to authorize any alteration, change, or other modification of or to the exterior of a Dwelling which requires the approval of the Board as set forth elsewhere in this Declaration.

(f) To the extent maintenance, repair and replacement by an Owner may involve possible damage to the Community Facilities or other Dwellings, the work shall be performed only with the prior consent of the Board or its duly authorized agent, except in the case of an emergency, subject to the requirements of the Board.

(g) The Board shall have the right to impose rules and regulations in accordance with § 81-320 of DUCIOA governing the use and care of portions of the Dwellings, Lots and Community Facilities to the extent reasonably related to the Community Association's maintenance, repair and replacement obligations hereunder.

(h) To the extent the roads, the street lighting system, the culverts and the storm water management system or portions thereof have not been dedicated to the public or to New Castle County by the Plan, maintenance and repair of same shall rest with the Declarant until the transfer of the Community Facilities from the Declarant to the Community Association occurs as provided for in Section 6.5 herein.

SECTION 6.2. Membership in the Community Association.

(a) All Owners upon acceptance of the deed to their Dwellings shall become Members of the Community Association and shall be obligated to pay all Assessments levied by the Community Association against their Dwellings. Except as otherwise provided, membership in the Community Association shall be limited to (i) the Owners of Dwellings subjected to this Declaration and (ii) the Declarant. Every Owner, as a Member of the Community Association, shall be entitled to all of the rights and shall be bound by all of the obligations accompanying membership. The ownership interest of each Owner in the Association is computed by multiplying one hundred (100) and the quotient resulting from dividing one (1) by the total number of all Lots.

(b) Notwithstanding any other provision of this Declaration or the Bylaws, no action shall be taken or adopted by the Community Association which would in any way affect any of the rights, privileges, powers or options of the Declarant (including, but not limited to, development of the Property or the marketing program of the Declarant) without the prior written approval of the Declarant.

(c) Every lawful transfer of title to a Dwelling shall include membership in the Community Association and, upon making this transfer, the previous Owner's membership shall automatically terminate. Except as otherwise expressly provided, membership in the Community Association may not be assigned or transferred without the transfer of legal title to a Dwelling and any attempt at assignment or transfer thereof shall be void and of no effect.

(d) Membership in the Association shall automatically terminate when an Owner sells, transfers or otherwise conveys his Dwelling.

(e) Anything hereinelsewhere to the contrary notwithstanding, Declarant, with respect of Dwellings and/or Lots it owns, shall not be assessed by the Association; provided, however, that Declarant shall pay Assessments with respect to Dwellings leased by Declarant to third party tenants.

SECTION 6.3. Voting.

(a) At all meetings of the Association the Owners of each Dwelling shall be entitled collectively to cast such vote or votes as provided for by this Declaration and the Bylaws. Owners shall be entitled to one (1) vote for each Dwelling in which they hold the interest required for membership in the Association.

(b) If a Dwelling is owned by more than one person and there is a conflict between or among the Owners of the Dwelling as to how the vote associated with the Dwelling should be cast, the vote shall be deemed included for purposes of determining a quorum but the conflicting votes cast by Owners of the Dwelling shall otherwise void the vote associated with their Dwelling. If a Dwelling is owned by a corporation, the officer or employee thereof, entitled to cast the votes of the Dwelling for the corporation shall be designated in a certificate for this purpose, signed by the president or vice-president, and attested to by the secretary or assistant secretary of the corporation, and submitted to the secretary of the Association.

SECTION 6.4. Board of Directors.

(a) The affairs of the Association shall be governed by a Board (referred to as the "Executive Board" in DUCIOA). The Board shall be comprised of no fewer than three (3) and no more than five (5) members.

(b) The Board shall initially be comprised of three (3) members, all appointed by the Declarant, as follows: (1) Mick Kenney; (2) David Watt; and (3) Kevin McLaughlin. Such Declarant appointees shall not be required to be Owners and may be, but shall not be required to be, residents of the State of Delaware.

(c) 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 Whispering Woods to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the Board shall be elected by Owners other than the Declarant and, unless such timing coincides with an annual meeting, the president of the Community Association 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 Whispering Woods 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 Whispering Woods 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 Whispering Woods 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 defined and provided in this Declaration, 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 five (5) members. The members of the Board elected by the Owners shall be Owners or spouses of Owners or, if the Owner is a corporation, limited liability company, partnership, trust or other entity, an officer, director, managing member or other authorized representative designated in writing by such entity.

(d) The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are established by this Declaration and the Bylaws directed to be exercised and done by the Association except as otherwise provided herein or in the Bylaws. The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the professional managing agent, if any, which might arise between meetings of the Board. In addition to the duties imposed by this Declaration or the Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to, and be responsible for, the following:

(i) Preparation of an annual budget, in which there shall be established the Assessment of each Owner, to be approved in accordance with § 81- 324 of DUCIOA.

(ii) Making Assessments against Owners to defray the costs and expenses of the Association and establishing the means and methods of collecting Assessments as established in this Declaration from the Owners. Unless otherwise determined by the Board, the annual Assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, as determined by the Board, each such installment to be due and payable in advance on the date(s) established by the Board.

(iii) Providing for the operation, care, upkeep, replacement and maintenance of the Community pursuant to the C&R Chart.

(iv) Designating, hiring and dismissing the personnel or contractors necessary for the maintenance, operation, repair and replacement of the Common Facilities, Lots, and Dwellings (in accordance with the C&R Chart) and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners; and, moreover, contracting the professional managing agent, if deemed necessary by the Board. No contractual agreement may bind the Association unless such contractual agreement provides for the right of the Association to terminate the same without cause or penalty at any time after transfer of control of the Association from the Declarant to the Owners, upon not less than ninety (90) days' notice. In addition, if entered into before a majority of the Board elected by the Owners (as opposed to appointed by the Declarant) in accordance with this Declaration and the Bylaws takes office: (1) any management contract, employment contract, (2) any other contract or lease between the Association and Declarant or an affiliate of Declarant, or (3) any contract or

lease that is not bona fide or was unconscionable to the Owner at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Owners (as opposed to appointed by Declarant) in accordance with this Declaration takes office upon not less than ninety (90) days' notice to the other party.

(v) Collecting the Assessments (including, but not limited to, Limited Charges) against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Community.

(vi) Making and amending rules and regulations in accordance with § 81-320 of DUCIOA respecting the use of the Property so that such do not unduly restrict the use and enjoyment by the Owners, their permitted tenants and guests.

(vii) Opening of bank accounts on behalf of the Board and designating the signatories required therefor.

(viii) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Community Facilities and repairs to, and restoration of, the Community Facilities, in accordance with the other provisions of this Declaration, after damage or destruction by fire or other casualty.

(ix) Enforcing by legal means, when deemed necessary and appropriate in the opinion of the Board, the provisions of this Declaration and the Bylaws and the rules and regulations for the use of the Property adopted by it and bringing any proceedings which may be instituted on behalf of the Owners.

(x) Obtaining and carrying insurance against casualties and liabilities, and paying the premium cost thereof.

(xi) Paying the cost of all services rendered to the Association, and not billed to Owners.

(xii) Keeping books with detailed accounts in chronological order of the receipts and expenditures affecting the Property and Association, and the administration of the Property, specifying the maintenance and repair expenses of the roads and Common Facilities, and any other expenses incurred. The said books shall be available for examination by the Owners, their duly authorized agents or attorneys, in accordance with and pursuant to the processes set forth in § 81-318 of DUCIOA. All books and records shall be kept in accordance with good and accepted accounting practices, and if so directed by the Board, the same may be audited by an outside auditor employed by the Board who shall not be a resident of Whispering Woods, or an Owner of a Lot therein. The cost of such audit shall be a Common Expense. An audited financial statement, if prepared, shall be available within one hundred twenty (120) days of the end of the fiscal year.

(xiii) Notifying a Mortgagee of any property of any default by the applicable Owner whenever requested in writing by such Mortgagee to send such notice.

(xiv) Maintaining written minutes of all meetings of the Association and/or Board.

(xv) Resolving disputes between and among Owners and the Board and making decisions regarding disputes related to the interpretation and application of this Declaration and the Bylaws and rules and regulations promulgated pursuant thereto.

(xvi) Borrowing in an amount not to exceed twenty-five percent (25%) of the value of the Common Facilities for any proper Association purpose by the execution of notes and mortgages or as security for the repayment thereof or such other security or securities as the Association shall designate for the payment of principal thereof and interest due thereon, subject to any restrictions or limitations which may be contained in this Declaration or DUCIOA.

(xvii) To do such other things and acts not inconsistent with this Declaration or the Bylaws which the Board may be authorized to do by a resolution of the Association.

(e) During the Declarant Control Period, all Board members shall serve for one (1) year terms. At the first meeting of the Association after the termination of the Declarant Control Period during which an election is held, the terms of office of the members elected by the Owners to serve on the Board shall be staggered. If three (3) members are elected, two (2) members shall serve two (2) year terms, and (1) member shall serve a one (1) year term. If four (4) members are elected, two (2) members shall serve two (2) years terms, and two (2) members shall serve one (1) year terms. If five (5) members are elected, three (3) members shall serve two (2) year terms and two (2) members shall serve one (1) year terms. At the expiration of the initial terms of office of the members of the Board elected at the first meeting of the Association after the termination of the Declarant Control Period, their successors shall be elected to serve for two (2) year terms. The members of the Board shall hold office until their respective successors shall have been elected and the newly elected member confirms his or her willingness to serve.

(f) At any regular or special meeting of the Board duly called, any one (1) or more of the members of the Board may be removed with or without cause by a majority of the Board members, and a successor may then and there be appointed by a majority of the remaining Board members to fill the vacancy thus created. Any member of the Board whose removal, with or without cause, has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of an Association meeting in response to said proposal and the purpose thereof and shall be given an opportunity to be heard at the meeting. In such a situation where the removal of a Board member, with or without cause, has been proposed by the Owners, a majority of the Owners present, in person or by proxy, at the meeting called for this purpose may remove the Board member in question and a successor may then and there be appointed by a majority of the Owners present to fill the vacancy thus created.

(g) Vacancies in the Board caused by any reason other than the removal of a member by a vote of the Owners shall be filled by a vote of a majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Board members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board for the remainder of

the term of the member so removed and until a successor shall be elected at the next annual meeting of the Association.

(h) The first meeting of the members of the Board following an annual meeting of the Association shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board so elected, and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, providing a majority of the whole Board shall be present thereat.

(i) Regular meetings of the Board (except for executive sessions held for a permitted purpose set forth in § 81-308A of DUCIOA) shall be open to all Owners after the Declarant Control Period ends and shall be held at least quarterly at such time and place as shall be determined from time to time by a majority of the Board members. Notice, including the agenda, of regular meetings of the Board shall be given to each Board member, by mail, email, telegraph, telefacsimile or telephone with mail confirmation, at least ten (10) but not more than sixty (60) days prior to the day named for such meeting. Except when a schedule of meetings has been distributed to the Owners that identifies the meeting in question or in cases of emergency meetings that may be held without prior notice, the Secretary shall cause notice of any regular meeting to be delivered to each Owner at least ten (10) but not more than sixty (60) days prior to the meeting (but not later than the time notice of the meeting is sent to members of the Board).

(j) Special meetings of the Board (except for executive sessions held for a permitted purpose set forth in § 81-308A of DUCIOA) shall be open to all Owners after the Declarant Control Period ends and may be called by the president on at least ten (10) but not more than sixty (60) days' notice to each Board member, given by mail, email, telegraph, telefacsimile or telephone with mail confirmation, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the president or secretary in like manner and on like notice on the written request of at least two (2) Board members. The secretary shall cause notice of any special meeting to be delivered to each Owner by any means described in the Bylaws at least ten (10) but not more than sixty (60) days prior to the meeting (but not later than the time notice of the meeting is sent to members of the Board).

(k) Notwithstanding any provision to the contrary contained herein, any Board member may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by him of the time and place of such meeting. If all Board members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting, including meetings conducted by telephone conference.

(l) At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business, and the votes of a majority of the members present at a meeting at which a quorum is present shall constitute the decision of the Board.

(m) The Board shall obtain adequate fidelity bonds for all officers, directors and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a valid expense payable by the Association.

(n) No Board member shall receive any compensation from the Association for acting as such, but may be reimbursed for necessary expenses incurred in regard to service as a Board member, as approved by the Board from time to time.

(o) Unless modified by the Board by resolution, *Roberts Rules of Order* (current edition) shall govern the conduct of all meetings of the Association when not in conflict with this Declaration or the Bylaws.

(p) The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Board members from and against all contractual liability to others arising out of contracts made or action taken by the Board on behalf of the Owners unless any such contract or action shall have been made in bad faith or contrary to the provisions of this Declaration or of the Bylaws. It is intended that the members of the Board shall have no personal liability with respect to any contract made or action taken by them on behalf of the Owners. Every agreement made or action taken by the Board on behalf of the Owners shall, if obtainable, provide that the members of the Board, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder, and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage interest bears to the total Lots in Whispering Woods. The Owners shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was a member of the Board, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Owners.

SECTION 6.5. Transfer of Community Facilities and Community Association Upon Transition.

Declarant shall maintain the Community Facilities and shall be responsible for the cost of such maintenance until the following conditions are satisfied: (i) the Community Facilities have been substantially completed; (ii) the Community Facilities have been transferred to the Community Association; and (iii) Declarant has transferred control of the Board to the Community Association. Notwithstanding the foregoing, Declarant shall not be responsible for maintaining any portion of the Community Facilities that are offered to and accepted by New Castle County or the State of Delaware for public dedication. Upon (a) substantial completion of the Community Facilities in accordance with the Development Plans and applicable law and (b) the transfer of control of the Board to the Community Association, the Community Association shall assume all responsibility for the management, operation, maintenance, insurance, repair and replacement of said Community Facilities and for the costs and expenses associated with such Community Facilities (but only to the extent such Community Facilities are not offered to and accepted by New Castle County or the State of Delaware for public dedication). For purposes of this Section 6.5, "substantial completion" or "substantially completed" shall mean the date when the Community Facilities are sufficiently complete so that they can be used for the use intended, and, if required by law, use and/or occupancy permits have been obtained for the Community Facilities. Not later than the election held pursuant to subsection 6.4(c) (the "First Election

Meeting”), the Declarant shall deliver all of the following property, to the extent within Declarant’s possession or control, to the Community Association:

(a) A photocopy of the Declaration and all amendments thereto, certified by affidavit of the Declarant, or an officer or agent of the Declarant, as being a complete copy of the actual Declaration.

(b) Certified copies of the Community Association’s certificate of incorporation and the Bylaws, and the minute books, including all minutes, and other books and records of the Community Association, including membership lists and any rules and regulations which have been promulgated.

(c) Resignations of officers and directors who are required to resign because the Declarant is relinquishing control of the Board.

(d) An accounting for all Community Association funds, including capital accounts and contributions, and the funds of, or control of, the funds of the Community Association.

(e) All tangible personal property that is the property of the Community Association, represented by the Declarant to be part of the Community Facilities or ostensibly part of the Community Facilities, and an inventory of that property.

(f) All insurance policies held by the Association.

(g) Any permits issued by governmental bodies applicable to the Property in force.

(h) All written warranties of the contractor, subcontractor, suppliers and manufacturers, if any, that are still effective.

(i) Leases to which the Community Association is a party, if any; employment contracts, management contracts; maintenance contracts, contracts for the supply of equipment or materials, and service contracts in which the Community Association is one of the contracting parties; and maintenance contracts and service contracts in which the Community Association or Owners have an obligation or responsibility directly or indirectly to pay some or all of the fee or charge of the person or persons performing the service.

SECTION 6.6. Committees.

The Board may establish committees of Owners from time to time to advise and/or report to the Board. Any such Committee shall be advisory in nature only, shall have no legal right to act for or bind the Association or Board, and may not handle finances or funds of the Association.

ARTICLE VII – INSURANCE

SECTION 7.1. Liability and Community Facilities.

(a) 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 Community Association, including, without limitation, liabilities arising out of or in connection with the Community Association's maintenance responsibility hereunder.

(b) In the event of damage to or destruction of any portion of the Community Facilities covered by insurance payable to the Community Association as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration thereof; shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate; and shall otherwise comply with the requirements of § 81-313(h) of DUCIOA.

(c) The Board shall also obtain the following insurance coverage and endorsements which may be applicable to the Community Facilities or other insured Property, all premiums for which are to be charged as Common Expenses:

- (i) Workmen's compensation policy to meet the requirements of law.
- (ii) Directors' and officers' liability and other insurance which the Board shall deem necessary to satisfy the indemnification obligations of the Community Association as provided in Article XIV of this Declaration.
- (iii) Fidelity insurance for the Board and all other persons with access to Association funds.
- (iv) All other insurance which the Board shall determine from time to time to be necessary or desirable.

SECTION 7.2. Dwellings.

(a) The Board shall obtain or cause to be obtained, to the extent reasonably available, master or blanket "all risk" property and casualty insurance insuring the Dwellings but excluding the improvements or betterments installed by the Owners and the contents and personal property in such Dwellings, covering the interests of the Association, the Board, the Owners of each Dwelling, and eligible Mortgagees, as their interests may appear. The total amount of insurance (after application of any deductibles) shall be the insurable replacement cost of the insured property (exclusive of items normally excluded from such casualty policies), provided that the Board shall be authorized to require the Association to acquire such greater coverage as shall in such Board's judgment be necessary to adequately insure the Dwellings and to protect Owners and the Mortgagees against loss.

(b) If the Board shall determine, after obtaining the insurance required by subsection (a) hereof for any period of time, to discontinue such insurance (whether due to escalating costs

or otherwise), the Board shall provide all Owners with at least ninety (90) days advance notice of any such discontinuation so as to permit such Owners the opportunity to obtain substitute coverage, and upon such notice, all Owners shall be obligated to procure and obtain such insurance and maintain such insurance in full force and effect thereafter. The Board may also promulgate rules and regulations setting forth the standards such insurance coverages shall meet so as to provide substantial uniformity in the types of coverages obtained by the Owners.

(c) To the extent that the use or occupancy of a Dwelling by an Owner or the occupant of any Dwelling is otherwise permitted hereunder, the Community Association shall have the right to charge the Owner of the Dwelling for any increase in insurance premiums payable by the Community Association occasioned by such use or occupancy. No Dwelling shall be used, occupied or kept in a manner which will in any way increase fire, liability or other insurance premiums payable by the Community Association, or any other Owner without the prior written permission of the Board, which permission shall be conditioned upon the Owner of the Dwelling being required to bear the full amount of any increase in premiums payable by the Community Association. No Dwelling or any part of the Property shall be used, occupied or kept in any manner which would violate any law, statute, ordinance or regulation of any governmental body or which would lead to the cancellation of any insurance policy or policies on the Property.

(d) Should Dwelling(s), or any part thereof, be destroyed, the Owner thereof shall be and is obligated to promptly rebuild the damaged or destroyed Dwelling(s) to substantially the same condition and of like manner and appearance as immediately prior to said damage or destruction, unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. In all events, any damage or destruction to a Dwelling shall be completely repaired/rebuilt as aforesaid within one (1) year from the date of said damage or destruction.

(e) Anything herein elsewhere to the contrary notwithstanding, each Owner shall be responsible to obtain liability insurance for his or her Lot and Dwelling in the form of ISO Form HO-6, or similar coverage, for betterments and improvements and personal property and personal liability.

SECTION 7.3. General Insurance Provisions.

(a) All liability insurance contracts shall contain severability of interest provisions and cross liability endorsements to cover liabilities of the Community Association or the Owners as a group. The Board and Owners shall acquire such insurance policies as required by law and the Board shall acquire such insurance as customarily acquired by associations similar to the Community Association, but the Board will specifically acquire Comprehensive "All Risk" Liability and Replacement Cost Insurance for which the Association shall be the named insured, and for which the Board will charge a determined percentage to each Owner as a Common Expense.

(b) The Board shall review, at least annually, all insurance coverage carried pursuant to this Declaration to evaluate this coverage with respect to its compliance with this Declaration, as well as with respect to what is reasonably appropriate coverage for communities comparable to the Community. In the event the Board determines after this review and evaluation that the

insurance coverage required hereunder is not consistent with other reasonably appropriate coverage when compared to coverage for communities comparable to the Property, the Board shall have the power to deviate from the specific provisions of this Section 7.2 only to the extent of providing consistent and reasonably appropriate coverage; provided the Board shall give the Owners at least thirty (30) days prior written notice of any deviation.

(c) If available, and where applicable, the Board shall endeavor to obtain policies that provide that the insurer waives its right of subrogation as to any claims against Owners, the Community Association, the Declarant, the Board and their respective servants, agents and guests.

(d) Notwithstanding the duty of the Board to maintain and, repair the Community Facilities, the Board shall not be liable for injury or damage caused by the failure of the Board to maintain or repair the same, except to the extent of the proceeds of insurance carried by the Board and collected and received therefore.

SECTION 7.4. Loss.

(a) Where a loss or damage occurs to any portion of the Community Facilities, or other insured Property, it shall be an obligation of the Association to repair and restore the damage caused by the loss unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. In the event of such loss or damage:

- (i) The Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall have the right and obligation to negotiate and contract for the repair and restoration of the Community Facilities, or other insured Property.
- (ii) If the net proceeds, having subtracted the deductible (as determined by the Board), of the insurance are insufficient to pay for the estimated cost of repair and restoration (or for the actual cost thereof if the work has actually been done), the Board shall promptly, upon determination of the deficiency, levy a special Assessment against all Owners for that portion of the deficiency which is attributable to the cost of repair and restoration of the Community Facilities, or other insured Property. The special Assessment funds shall be added by the Board to the insurance proceeds available for the repair and restoration.
- (iii) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient, but additional funds are raised by special Assessment, so that sufficient funds are on hand to fully pay for the restoration and repair, then no Mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan.

(b) If for any reason the Community Facilities or other insured Property are not able to be repaired or replaced, the Board shall have the power to do the following:

- (i) The insurance proceeds attributable to damaged Community Facilities or other insured Property shall be used to restore the damaged area to a condition compatible with the remainder of the Property as determined by the Board;
- (ii) The insurance proceeds attributable to Community Facilities or other insured Property which are not rebuilt shall be utilized by the Association to offset Common Expenses or added to reserve accounts, as determined by the Board; and
- (iii) The remainder of the proceeds shall be distributed equally to the Owners and their mortgagees as their respective interests may appear.

(c) The Board is hereby empowered to compromise and settle claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefore, upon the payment of claim

ARTICLE VIII - EASEMENTS

SECTION 8.1. Utilities.

(a) All of the Property shall be subject to an easement for the present and future installation and maintenance of electric service, master and/or cable television service, telephone service, water service, storm water and sanitary sewage services and other utility services and the facilities and appurtenances necessary to the same, which easement shall run in favor of the Declarant, the Community Association and the entity or entities owning or operating these facilities and providing the aforementioned services, including, but not limited to, the Utilities. The Declarant and the Board shall have the right to grant to third parties additional utility easements which are deemed reasonable by the Declarant and the Community Association shall have the right to connect or tie into an Owner's outdoor water spigots and to use reasonable amounts of water therefrom without cost or charge for purposes of watering planted and grass areas of the Property, including the Owner's Lot. This right shall continue as to areas of the Property for a period of ninety (90) days after the planting of these areas with landscaping, seed or sod.

(b) The Declarant, for itself and its successors and assigns, and for each Lot within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other transfer documents therefore, hereby covenants and agrees to maintain and repair the Wastewater Service Line servicing such Lot as applicable; to allow inspection by the applicable Utilities, to remove any blockage in said line, including without limitation blockage beyond clean-outs on the Lot and to remediate any environmental damage caused by breakage, blockage, or leakage thereof; and to pay or cause to be paid the service fees required under the terms of the Wastewater Agreement. No outdoor shower, downspout, sump pump or other device collecting rainwater or groundwater shall be connected to the wastewater system; any violation of this prohibition shall authorize and entitle the applicable Utilities to arrange for shut-off of potable water service to the applicable Lot.

SECTION 8.2. Association & Board Access.

The Community Association and its Board, officers, agents and employees, and any management company and its agents and employees, shall have the irrevocable right and easement to have access to each Dwelling and Lot as may be necessary for the inspection, maintenance, repair or replacement of any of the Community Facilities therein or accessible therefrom, or the making of any addition or improvements thereto, or to make other repairs, or fulfill any other requirements herein, to any Dwelling, Lot, and the Community Facilities, or to abate any violation of this Declaration or any rules or regulations of the Community Association or any violation of any laws or orders of any governmental authorities having jurisdiction over the Property.

SECTION 8.3. Declarant's Easement for Marketing.

For so long as Declarant owns any Lot or any portion of the Property or Project, Declarant reserves the right with respect to its marketing of Dwellings for this or other affiliated properties to use the Community Facilities without any charge or payment and, to the extent not already conveyed to purchasers, Lots or Dwellings for the ingress and egress of itself, its officers, employees, agents, contractors, subcontractors and prospective purchasers. The Declarant also reserves the right to permit prospective purchasers to park in any parking spaces located in the Community Facilities. The Declarant shall also have the right, in connection with its marketing of Dwellings, to erect signs on the Community Facilities, or on those Dwellings not already conveyed to purchasers. Any damage to the Community Facilities resulting from this easement shall be repaired by the Declarant within a reasonable time after the completion of its sale of all of the Dwellings in the Community or termination of the use of the Community Facilities, whichever shall occur first. The Declarant agrees to indemnify the Community Association from all liabilities resulting from the use of the Community Facilities in conjunction with the marketing of Dwellings. The rights reserved for the Declarant by this Section 8.3 shall remain in effect for as long as the Declarant shall remain the Owner of or have the right to create or build a Dwelling on the Property. This Section 8.3 shall not be amended without the prior written consent of the Declarant.

SECTION 8.4. Declarant's Easement for Construction.

The Declarant reserves the right with respect to the construction of Dwellings and Community Facilities to go upon any and all of the Property for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Community Facilities or Dwellings (including without limitation, to change the grade of any portion of the Property and/or to install drainage control devices so as to control possible drainage and/or runoff of storm water in connection with the development of the Property or adjacent lands). This easement shall be appurtenant to and shall pass with title to every Dwelling. The rights hereby reserved for the Declarant shall last as long as the Declarant is the Owner of or has the right to create or build a Lot or Dwelling on the Property. This Section 8.4 shall not be amended without the prior written consent of the Declarant.

SECTION 8.5. Encroachments.

If any portion of the Community Facilities hereafter encroaches upon any Dwelling or Lot, or if any Dwelling hereafter encroaches upon any other Dwelling, Lot or upon any portion of the Community Facilities as a result of settling or shifting of any Dwelling, other than as a result of the purposeful or negligent act or omission of the Owner of the encroaching Dwelling or of the Community Association in the case of encroachments by the Community Facilities, a valid easement appurtenant to the encroaching Dwellings or Community Facilities for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist.

SECTION 8.6. Rights of the Declarant & Obligations of Owners With Respect to Utilities.

The rights and duties of the Owners of Dwellings within the Property with respect to sanitary sewer, storm sewer, water, electricity, telephone lines and facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone, gas or television lines are installed within the Property, which connections or any portion thereof lie in or upon a Lot owned by the Owner of a Dwelling served by these connections, the Declarant (as long as it owns a Lot or Dwelling in the Property) and the Community Association shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lot or Dwelling and to have the utility companies or authorities enter upon the Lot or Dwelling in or upon which the connections, or any portion thereof lie to repair, replace and generally maintain the connection as and when they may deem the same necessary. The Community Association shall be responsible for restoring the surface of the easement area to the same condition which existed prior to the use to the extent that the utility company or authority is not so responsible or has not done so.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone, gas or television lines are installed within the Property which connections serve more than one Dwelling, the other Owner of each Dwelling served by the connection shall be entitled to the full use and enjoyment of the portions of the connections as serve his Dwelling or Lot.

(c) In the event of a dispute between Owner and the Community Association with respect to repair or rebuilding of these utility connections, or with respect to the sharing of the costs thereof, upon written request of any one of these Owners, addressed to the Community Association, the matter shall be submitted to the Board, who shall decide the dispute, and the decision of the Board shall be final, conclusive and binding on all parties.

SECTION 8.7. Continuing Easements.

Each Owner and the Declarant shall have an easement of use, access, ingress and egress to, from, over and through any private road and/or sidewalk which is located either totally or partially within an Owner's Lot.

SECTION 8.8. Easements for Municipal Officials.

Municipal officials such as fire and police personnel shall have the right to specific easements over the Property to provide the public services incident to their respective job duties during the time necessary thereto, for purposes of enforcing the applicable laws, ordinances, rules, and regulations of the said governmental bodies.

SECTION 8.9. Easements to Run With the Land.

The foregoing easements provided for in this Article VIII shall run with the land and inure to the benefit of and be binding upon the Community Association, each Owner, the Declarant, each Eligible Mortgage Holder, and each occupant or other person having any interest in any Dwelling or in the Community Facilities at the time of reference.

ARTICLE IX - ASSESSMENT OBLIGATIONS OF OWNERS

SECTION 9.1. Owners' Assessment Obligation.

(a) Aside from and in addition to Assessments provided for below each Owner of any Dwelling shall pay at settlement on his Dwelling (whether the initial sale from Declarant or at a subsequent sale by an Owner) a Five Hundred (\$500.00) Dollar payment of which one-half (1/2) shall be deposited to the repair and maintenance reserve fund, and one-half (1/2) shall be used by the Association for operating expenses of the Community.

(b) Each Owner shall be deemed to covenant and agree to pay to the Community Association all Assessments, including, but not limited to the following:

(i) Regular Assessments for Common Expenses to be established annually and made due and payable on a monthly basis as determined from time to time by the Board based upon the budget of the Community Association. Due to the relative benefits and costs of servicing the Carriage House Dwellings and Twin Dwellings vs. the Detached Dwellings, Detached Dwellings shall at all times be assessed for Common Expenses at a rate determined by the Board that is ten (10%) percent to twelve (12%) percent more than the rate at which Carriage House Dwellings and Twin Dwellings are assessed for Common Expenses (on a Dwelling by Dwelling basis). The Board will allocate the Common Expense liability (which excludes any liability for Limited Charges, provided for separately in (iii) below) for each type of Dwelling using the following formulas:

“X” = the monthly Assessment for Common Expenses determined by the Board to be levied upon each Carriage and Twin Dwelling

111 Total Carriage and Twin Dwellings * X = Total Carriage and Twin Assessments for Common Expenses (“Y”)

$67 \text{ Total Detached Dwellings} * (X * [1.1 \text{ to } 1.12, \text{ as determined by the Board}]) = \text{Total Detached Assessments for Common Expenses ("Z")}$

$Y + Z = \text{Total Monthly Amount of Common Expenses Assessed for the Entire Community ("TMCE")}$

$Y / \text{TMCE} = \% \text{ of TMCE levied upon Owners of Carriage and Twin Dwellings ("Y\%")}$

$Z / \text{TMCE} = \% \text{ of TMCE levied upon Owners of Detached Dwellings ("Z\%")}$

$Y\% / 111 = \text{the \% of TMCE allocated to each Carriage Dwelling and Twin Dwelling}$

$Z\% / 67 = \text{the \% of TMCE allocated to each Detached Dwelling}$

By way of example, if the Board determines that Detached Dwellings shall be assessed for Common Expenses at a rate that is twelve (12%) percent more than the rate at which Carriage House Dwellings and Twin Dwellings are to be assessed, then using the above formulas the Common Expense liability of a Carriage House Dwelling would be approximately 0.537%, the Common Expense liability of a Twin Dwelling would be approximately 0.537%, and the Common Expense liability of a Detached Dwelling would be approximately 0.602%.

(ii) Special Assessments fixed, established and collected from time to time as determined by the Board for costs and expenses other than those for routine maintenance and repair. The Common Expense liability of a Dwelling for a special Assessment shall be determined in the same manner that the Common Expense liability of Dwelling for regular Assessments for Common Expenses is calculated.

(iii) Limited Charges against any one or more Dwellings to provide services which are exclusively used for such Dwellings. Each Assessment, together with interest thereon, fines, late charges and costs of collection thereof (including attorneys' fees) as hereinafter provided shall also be the personal obligation of the Owner who was the Owner of the Dwelling at the time when the Assessment became due.

(iv) Any other charges or Assessments for what may be determined from time to time by the Community Association to be Common Expenses.

(v) Any interest charges, attorneys' fees, penalties or fines levied by the Board for nonpayment of Assessments or for non-compliance with the terms and provisions of this Declaration, the Bylaws or any rules or regulations created by the Board.

SECTION 9.2. Budgets.

The Board shall prepare a proposed budget of the Association at least sixty (60) days before the beginning of each fiscal year and set a date for a meeting of the Association. After the termination of the Declarant Control Period, the Board shall cause a summary of the proposed budget, and the amount of the Assessments to be levied against each Dwelling for the following year, along with notice of the meeting of the Association Members 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 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 proposed budget is ratified as the budget for such fiscal year, whether or not a quorum is present at such meeting of the Association. 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 Association, then and until such time as a budget shall have been determined as provided herein, the budget in effect for such immediately preceding fiscal year shall continue for the succeeding fiscal year.

SECTION 9.3. Budget Deficit During Declarant Control Period.

If any annual budget deficit (defined as actual annual Association expenses exceeding Association income adjusted upwards by the amount of any annual Assessments that are due and payable from Owners but remain delinquent and unpaid at the end of the applicable fiscal year) remains at the end of the Association's fiscal year for which a budget was approved by the Board during the Declarant Control Period only, after the application of all such working capital funds towards such deficit, then the Declarant shall make a nonrefundable capital contribution to the working capital fund of the Association in the amount of such remaining budget deficit.

SECTION 9.4. Open Space Maintenance Contribution.

The Declarant shall establish a fund pursuant to Chapter 40, Article 27 of the New Castle County Code for the purpose of maintaining open space and common facilities. Such maintenance fund shall be funded by a one-time assessment of Six Hundred Ninety-Eight Dollars and Eighty-Eight Cents (\$698.88), and shall be payable by the initial purchaser of each Dwelling at the earlier of settlement or occupancy of such Dwelling, and thereafter by subsequent purchasers of the Dwelling for value upon settlement of each sale and conveyance of the Dwelling. Such one-time assessments shall be levied for so long as required by New Castle County.

SECTION 9.5. Owners' Negligence.

Each Owner shall be obligated to reimburse the Association for any expenses incurred by it in repairing or replacing any part or parts of the Community Facilities, party walls, or any component of a Dwelling for which the Association has responsibility for replacement, maintenance or insurance, damaged by his act, omission or negligence or by the act, omission or negligence of his agents, guests or licensees, promptly upon receipt of the Association's statement therefore.

SECTION 9.6. Surplus Funds.

Any Common Surplus remaining after payment of or provision for Common Expenses and any payment of reserves may be used by the Association as determined by the Board and, to the extent not used or deposited by the Board into a reserve account, may be credited to the Owners to reduce their future Assessments.

SECTION 9.7. Time of Payment.

Except as otherwise provided in this Declaration, time for payment of Assessments by an Owner shall be fixed at the discretion of the Board; provided that all regular and special Assessments shall be declared by the Board and made due and payable on an annual basis. The failure of the Board to formally declare any annual Assessment shall result in the regular annual Assessment for the immediately preceding year being the regular annual Assessment applicable to and due and payable for the current year.

SECTION 9.8. Lien for Assessments.

The regular and special Assessments for Common Expenses and Limited Charges, together with any interest thereon, fines, late charge and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien pursuant to DUCIOA § 81-316 upon the Dwelling against which each Assessment is made from the time the Assessment, fine, late charge or cost of collection become due. Each Assessment, together with interest thereon, fines, late charges and cost of collection thereof as hereinafter provided shall also be the personal obligation of the Owner of the Dwelling at the time when the Assessment becomes due.

SECTION 9.9. Late Payment of Assessments.

Any Assessment or installment thereof not paid within thirty (30) days after the due date may bear interest from the due date at the rate of fifteen percent (15%) per annum or a higher rate permitted by law which the Board shall from time to time determine. The Board may assess fines, late charges and costs of collection (including attorneys' fees). The Board shall also have the right to charge a delinquency Assessment, as established from time to time by the Board, against any Owner whose Assessments are delinquent for a period exceeding ten (10) days from the due date. The Board shall have the right to accelerate payment of all remaining proposed payments of any regular or special Assessments for the remainder of the fiscal year.

SECTION 9.10. Method of Enforcing Collection of Assessments.

Any Assessment charged against an Owner may be enforced by a lawsuit or execution of a lien brought by the Board on behalf of the Association and/or the Owners in an action at law or equity against the Owner personally obligated to pay the same, or by executing the lien described herein against the Lot or Dwelling, or both, and the Board may seek whatever other remedies which are available at law or in equity. In addition to these rights and remedies available to the Association, the Association shall have the right to revoke the rights of an Owner in the Association to the extent permitted under DUCIOA; provided the Association shall provide written notice of any revocation of rights and an opportunity for the defaulting Owner to be

heard before the Board. The decision of the Board shall be final. Any judgment against a Lot and its Owner shall be enforceable in the same manner as is otherwise provided by law. Attorneys' fees, court costs and collection expenses incurred by the Board incident to the collection of any Assessments or the enforcement of any lien, together with all sums advanced and paid by the Board for taxes and payments on account of superior liens which may be required to be advanced by the Board in order to protect its lien, shall be payable by the Owner and secured by this lien.

SECTION 9.11. Unpaid Assessments at the Time of Execution Sale Against a Dwelling.

In the event that title to a Dwelling is transferred by sheriff's sale pursuant to execution upon any lien against the Dwelling, the Board may give notice in writing of any unpaid Assessments, which are a charge against the Dwelling but have not been reduced to a lien, to the sheriff and the sheriff shall pay the Assessments of which he has notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay, but prior to any distribution of the balance to the former Owner against whom the execution issued. Any unpaid Assessments which cannot be promptly collected from the former Owner may be reassessed by the Board as a Common Expense to be collected from all the Owners, including the purchaser or acquirer of title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid Assessments which are a charge against a Dwelling, the Board may, on behalf of the Owners, purchase the Dwelling at sheriff's sale; provided this action is authorized by the affirmative vote of a majority of the Board. If it does so purchase, the Board shall thereafter have the power to sell, convey, or mortgage the Dwelling to any person whatsoever.

SECTION 9.12. Voluntary Sale of a Dwelling.

Upon the voluntary sale or conveyance of a Dwelling, or any other transfer, by operation of law or otherwise, except a transfer described in Section 9.11 of this Declaration, and a transfer by Deed in lieu of foreclosure to an Eligible Mortgage Holder, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments which are charges against the Dwelling as of the date of the sale, conveyance or transfer. This joint and several liability shall be without prejudice to the right of the grantee to recover from the grantor in the amount of any unpaid Assessments which the grantee may pay, and until these Assessments are paid, they shall continue to be a charge against the Dwelling, which may be enforced in the manner set forth above; provided, however, any person who shall have entered into a written agreement to purchase a Dwelling shall be entitled to obtain a written statement from the Treasurer of the Association setting forth the amount of unpaid Assessments charged against the Dwelling and its Owner, and if the statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Dwelling after transfer thereof shall be liable for the payment of the amount in excess of the unpaid Assessments shown on the statement.

SECTION 9.13. Mortgage Foreclosure.

If an Eligible Mortgage Holder or other purchaser of a Dwelling acquires title to the Dwelling as a result of foreclosure of the first mortgage, or by deed in lieu of foreclosure, the

acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or other charges by the Association pertaining to the Dwelling or chargeable to the former Owner which accrue prior to acquisition of title as a result of the foreclosure. The unpaid share of the charges shall be a Common Expense collectible from all Owners, including the acquirer of the Dwelling by foreclosure, his successors and assigns.

SECTION 9.14. Declarant's Assessment Obligation and Assumption of Deficits.

(a) The Declarant shall not be liable for any Assessments or charges levied by the Association against Lots or Dwellings owned by the Declarant, except for Dwellings leased by Declarant to third party tenants.

ARTICLE X - TRANSFER OF DWELLINGS

SECTION 10.1. Transfer of Dwellings.

Any Owner may, at any time, transfer Ownership in the Lot and Dwelling (which must include such Owner's membership in the Association) to any other person, and it shall not be necessary to secure the prior consent of the Association, Board or any other Owner; provided however any such transfers shall be subject to this Declaration and the regulations regarding age of occupants as provided for in the applicable zoning regulations of New Castle County and the Fair Housing Act and its amendments as referred to above in subsection 4.1(a). Sales to be approved must comply with the Board's policies as described in 4.1, including, without limitation, the Board's right to enact rules and regulations as set forth therein.

SECTION 10.2. Leasing of Dwellings.

Any Owner shall be permitted to lease his Dwelling, provided that such lease shall (i) have an initial term of one (1) year or longer, (ii) contain provisions advising the tenant of his or her obligation to comply with all provisions of the Governing Documents, (iii) be approved by the Board prior to its effective date; and (iv) provide that the Association shall have the right, in addition to all other rights provided by DUCIOA and any other applicable laws, to terminate the lease upon default by the tenant in observing any of the provisions of the Governing Documents. At least one tenant under any lease of a Dwelling must satisfy the requirements of subsection 4.1(a) hereof (regarding the age of 55 or over requirement). The Owner(s) of a leased Dwelling shall notify the Association in writing of the Owners' current address. The Owner(s) of a leased Dwelling shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence, of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. In the event the Association fails to approve, with or without conditions, or deny a proposed lease within forty-five (45) days from the date the form of the proposed lease shall have been submitted, then approval will be deemed to have been denied.

SECTION 10.3. Mandatory Disclosure to Purchaser.

(a) Within five (5) days after the execution of an agreement for the sale of the Dwelling by the Owner, the Owner shall submit to the Association the names and addresses of the Purchaser. No later than sixty (60) days before settlement under said agreement of sale, Owner shall notify the Association in writing of its desire for the Certificate (defined below), and the Association shall deliver the same within fifteen (15) days to Owner to give the same to the purchaser at least thirty (30) days before Settlement.

(b) On or before the settlement of a Dwelling, the Association shall furnish a certificate ("Certificate") issued by the Association, which Certificate shall be acknowledged by the purchaser on or before Settlement on the Dwelling and promptly returned to the Association, containing the following information:

(i) A statement of the then current amount of the Assessments payable annually and any unpaid Assessments currently due and payable from the selling Owner;

(ii) A statement of any other fees payable by the selling Owner;

(iii) A statement of any special Assessments currently proposed or adopted by the Association for the current and next two succeeding fiscal years, if these have been determined;

(iv) A statement of the amount of any reserves or any portions of those reserves designated by the Association for any specified project;

(v) A copy of the most recent regularly prepared balance sheet and income and expense statement of the Association;

(vi) A copy of the current operating budget of the Association;

(vii) A statement describing any insurance coverage which may be provided for the benefit of Owners;

(viii) A current copy of this Declaration, the Bylaws, all rules and regulations promulgated by the Association, any amendments to the foregoing and any other covenants, conditions or restrictions and related documents which may apply to the Dwelling;

(ix) Such additional information as may be required by § 81-409 of DUCIOA.

(c) A purchaser shall not be liable for any unpaid Assessments greater than those set forth in the Certificate, other than additional Assessments or other charges arising from the passage of time. The Association shall have the power to assess the reasonable cost of the preparation of the Certificate to the selling Owner or other requesting person and require payment thereof prior to the delivery of the Certificate to the selling Owner or other requesting person. The Association is not liable to any Owner or purchaser for any errors in the Certificate or for failure to comply with the foregoing requirements, except for the Association's intentional misconduct.

ARTICLE XI - USE AND ADDITIONAL RESTRICTIONS

SECTION 11.1. Use Restrictions.

(a) Except as used by the Declarant in connection with its construction and marketing of Dwellings, each Dwelling shall be used for residential purposes only; provided (subject to subsection (h) below) that home occupations may be carried on in the Dwelling if the use is incidental to the Dwelling's primary residential use, shall have no employees at the Dwelling, shall be in compliance with all zoning and other applicable laws, ordinances, and any rules or regulations, and shall be approved by the Board and by any municipal authorities having jurisdiction over the use. No Owner shall permit his Dwelling to be used or occupied for any prohibited purpose.

(b) No part of the Property shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of any other Dwelling or the Community Facilities. In illustration and not limitation of the foregoing, no Owner, guest or invitee shall play loud music, create excessive noise, or permit trash or clutter to accumulate on his Lot.

(c) Except for work done by the Declarant in connection with the construction and marketing of Dwellings, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Property, Community Facilities, Lots, or exteriors of Dwellings without the prior written approval of the Board.

(d) The interior of each Dwelling shall be maintained by its Owner or occupant in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any rules or regulations as may be applicable hereunder or under law. All drapes and other window treatments shall be all white or off-white on the side facing the outside of the Dwelling.

(e) No Owner or occupant of any Dwelling shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Dwelling or the Community Facilities by the Owner or occupant of any other Dwelling, or which creates or results in a hazard or nuisance on the Property.

(f) Except for a single non-illuminated address number sign to a Dwelling and except for the right reserved for the Declarant for sign(s), no sign may be erected by any Owner on or in a Lot or Dwelling (visible from the outside of the Dwelling) or on any of the Community Facilities, without the prior written approval of the Board. In no event shall any Owner or occupant display any real estate for sale sign of any kind on any Lot except in compliance with subsection (v) hereof. If permission is granted to any Owner to erect a sign, the Board reserves the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes.

(g) No Owner or occupant may obstruct the Community Facilities in any way. No Owner or occupant may store anything in or on the Community Facilities without the prior written approval of the Board.

(h) Each Dwelling shall be occupied by not more persons than the maximum permitted by law for the Dwelling.

(i) Any pet creating excessive noise, so as to disturb another Owner, whether the animal is creating a disturbance from within or outside the Dwelling; must be removed from the Property. A maximum of three (3) dogs, cats and/or other small domesticated animals may be kept by an Owner as household pets, provided that such permitted species are not kept for any commercial purposes. No non-domestic animal life may be raised, bred or kept in any Dwelling or Lot or in the Community Facilities. Non-domestic animals include, without limitation, chickens and pigs. No Owner may permit their animals to be unleashed or to defecate, without clean-up, in the common areas. Pet owners are to take extra care to not have their pets urinate or defecate on landscaped areas. Feeding of wild animals shall be prohibited; provided, however, that small bird feeders may be permitted by rule of the Board. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets.

(j) No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept on the Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or the Board; provided these materials shall be kept in sanitary containers and in a clean and sanitary condition. These containers shall be placed for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

(k) No Owner or occupant shall erect or maintain an exterior antenna on any Lot or Dwelling. An Owner may install a small satellite dish with the prior written approval of the Board consistent with applicable federal law. Application for such approval shall in all cases include a detailed plan locating the proposed dish on the property and landscaping plan to conceal the dish from view from the remainder of the Property, and any consent by the Board will be conditioned upon installation, maintenance and replacement of such landscaping. The Board reserves the right to reject an application if the satellite dish has to be located in an area which, by the Board's sole discretion, cannot be adequately screened from other homes and the Community Facilities.

(l) Only currently registered and licensed four wheel vehicles, two wheel motorcycles and standard bicycles may be operated on driveways, streets, and other paved parking areas on the Property. No vehicles of any sort may be operated on other areas of the Property. For avoidance of any doubt, only four wheel passenger vehicles used on a regular basis by the Owner or a temporary guest may be parked outside a garage of any Dwelling. Any van, truck, motorcycle, bicycle, all-terrain vehicle, golf cart, snowmobile, commercial vehicle (except on a day-to-day temporary basis in connection with repairs maintenance or construction work on the Property), and any recreational vehicle, mobile home, boat, trailer or similar equipment can only be parked on the Property if entirely enclosed in the garage of a Dwelling or by rule and regulation of the Board. Any maintenance, servicing, or repair of any vehicle is permitted only in a nearly enclosed garage.

(m) The Board shall have the power to remove any sign not in accord with the requirements of subsection (f) and to charge the person or persons causing the erection of same

the cost thereof. In the event that the person so responsible cannot be ascertained or the funds cannot be collected, then the Board shall be permitted to pay the same from the Association funds.

(n) To the extent maintenance is not specifically provided by the Association the Owner of each Dwelling shall maintain the Dwelling in a manner satisfactory to the Association and in accordance with those additional covenants, conditions or restrictions which may apply to the Dwelling. In the event that a Dwelling shall not be so maintained, the Association shall have the right to enter upon the Dwelling to maintain the same, after giving the Owner at least fourteen (14) days written notice to cure any maintenance problems or deficiencies, and, in this event, the Association shall have the right to assess the particular Owner for the cost of any maintenance and an administrative surcharge. The Association by its Board shall have the right to establish rules and regulations governing the exterior maintenance of any Dwelling.

(o) No tents, storage tanks, sheds, or accessory buildings or structures shall be erected or permitted to remain on the Property without the prior written approval of the Board.

(p) No outdoor clothes lines may be erected, installed or permitted to remain on any Lot.

(q) No Owner may moor or launch a boat, build a dock, fish, swim, wade, skate or other similar use in/on the ponds on the Property, if any.

(r) No tree, shrub, bush or other plant of any kind located on the Community Facilities may be cut down, trimmed, relocated, uprooted or altered in any way except by the Association, and no tree climbing or other hazardous activity of any kind is permitted on the Community Facilities.

(s) No swimming pools above or below ground are permitted, except for the swimming pool that is shown on the Plan as part of the Community Facilities.

(t) No building, fence, wall or other structure or improvement including, but not limited to, landscaping or plantings (other than periodical plantings in plant bed(s) adjacent to Dwellings consistent with Association rules and regulations or guidelines) shall be commenced, erected, installed, placed or maintained upon an Owner's Lot or Dwelling, nor shall any exterior addition to or change (including change of external color scheme) or alteration or addition be made to any Dwelling which alters the external appearance of the Dwelling, the Lot or fence erected on the Lot by the Declarant, if any, prior to submitting an application for review to and receiving prior written approval by the Board. In addition, no man-made object, including, without limitation, statuary, grills, hoses, furniture, swings, bird baths and/or any objects of any other nature, may be placed on any portion of any Lot except on paved areas thereon at any time. The foregoing is in recognition of the need to keep all landscaped areas free from obstructions to facilitate the Association's common maintenance of all Lots.

(u) Each Owner shall submit to the Association, plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the Owner's proposed changes, alterations or additions to the Lot or Dwelling. The submission shall contain proof of compliance with all applicable codes, laws and ordinances. The Association shall have the right

to request additional information, plans and materials concerning any proposed alterations, additions and improvements. In the event the Association fails to approve, with or without conditions, or deny the application within forty-five (45) days from the date all plans and specifications, including all additional information, plans and materials which may be requested by the Association have been submitted, approval will be deemed to have been denied. The Association shall review the plans to determine whether they are consistent with the original design and construction of the Lots and Dwellings in the Property. The Board shall have the right to establish design criteria and standards for alterations, additions and improvements within the Property.

(v) Any Owner wishing to sell his Dwelling shall provide to the Association the name and telephone number of the listing agent (if any), or the Owner's telephone number if there is no listing agent. The Owner shall prepare and install on the Owner's Lot, at the Owner's expense and in a location mutually acceptable to the Owner and the Association, a sign in accordance with subsection (f) and the determination of the Board. The Board may, from time to time, adopt and enforce rules and regulations regarding the size, style, form and location of all such signs.

(w) No window air conditioners or window fans which project beyond the window screen shall be permitted.

(x) In accordance with § 81-320(c) of DUCIOA, any Owner shall have the right to display the flag of the United States of America, measuring up to three (3) feet by five (5) feet, on a pole attached to the exterior wall of such Owner's Dwelling.

(y) The provisions of this Article XI shall not apply to the Declarant.

ARTICLE XII – PARTY WALLS

SECTION 12.1. Party Walls.

(a) General Rules of Law to Apply. To the extent not inconsistent with the provision of this Article XII, the general rules of law regarding party walls and liability for property damage due to negligence or willful act or omissions shall apply to each party wall or party fence which is built as part of the original construction of the Carriage House Dwellings and Twin Dwellings upon the Property and any replacement thereof.

(i) In the event that any portion of any structure, as originally constructed by the Declarant, including any party wall, shall protrude over an adjoining Lot such structure, or party wall, shall not be deemed to be an encroachment upon the adjoining Lot or Lots, and Owners shall neither maintain any action for removal of a party wall or fence or projection nor any action for damages. In the event there is a protrusion as described aforesaid, it shall be deemed that the Owners and, where applicable, the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or party wall. The foregoing shall also apply to replacements of any structures, or party walls if same are constructed in conformance with the original

structure, or party wall constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(c) **Destruction by Fire or Other Casualty.** If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provision of this Article XII, an Owner, who by his negligent or willful act causes the party wall to be damaged, or exposed to the elements, shall bear the whole cost of repairing the damage and/or furnishing the necessary protection against such elements.

(e) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

(f) **Arbitration.** In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article XII, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and be binding upon the parties. The costs of such arbitration shall be shared equally by the parties.

(g) **Control.** In case of any conflict between the terms and provisions of this Article XII and any other provisions of this Declaration, the terms and provisions of this Article XII will control.

ARTICLE XIII - COMPLIANCE AND DEFAULT

SECTION 13.1. Compliance and Default.

Each Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, the Bylaws and any rules and regulations adopted pursuant thereto, and the same as may be amended from time to time.

SECTION 13.2. Enforcement.

Failure of an Owner to comply with any provision of this Declaration or the Bylaws or any rules and regulations adopted pursuant thereto shall entitle the Association or Owners to the remedies provided in this Declaration, and also to the following relief, none of which shall be exclusive of any other remedies:

(a) Suits: The Association or any aggrieved Owner shall be permitted to sue for the recovery of damages or for injunctive relief, or both; provided, that the Owner has exhausted his remedies provided for herein. This relief shall not be exclusive of other remedies provided by law.

(b) Costs and Attorneys' Fees: In any proceeding arising hereunder, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees; provided, however, that no costs or attorneys' fees may be recovered against the Board in any action unless the court shall first expressly find that the Board acted in bad faith.

(c) No Waiver of Rights: The failure of the Declarant, or the Board, or any Owner to enforce any covenant, restriction or other provision of this Declaration, the Bylaws or any rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

SECTION 13.3. Complaint & Hearing Procedures; Actions by Owners.

No Owner or occupant shall have the right to object, challenge, commence any suit at law or in equity or take any other action under any act, power or authority now in force or hereafter to be enacted except after following procedures established by the Board by rule or regulation consistent with the provisions of this Section 13.3. The Board, or a committee appointed by the Board, shall hear complaints from Owners or occupants of alleged violations of this Declaration (other than violations with respect to assessment obligations), the Bylaws and any rules and regulations of the Association. The Board, or a committee appointed by the Board, shall hold a hearing on any complaint within thirty (30) days after the receipt by the Board of a formal notice of complaint from an Owner or occupant. A decision shall be issued in writing by the Board within ten (10) days after the conclusion of the hearing. The Board shall have the right to establish various rules and procedures governing the operation and administration of the complaint and hearing process and the enforcement of the Association documents and rules and regulations. Unless the internal remedies provided by this Section 13.3 and any rules and regulations promulgated by the Board shall be expressly waived by the Association, or the Association fails or refuses to act, no action at law or in equity shall be commenced by any Owner or occupant until this internal remedy is pursued to exhaustion. Any action by an Owner or occupant against any other Owner or occupant arising out of any term, covenant or condition contained in the Bylaws, this Declaration or any rules and regulations adopted pursuant thereto shall be subject to the same procedures. In hearings before the Board, or a committee appointed by the Board, all parties shall be entitled to be represented by counsel.

ARTICLE XIV - INDEMNIFICATION OF OFFICERS, MEMBERS OF THE DIRECTORS AND COMMITTEE MEMBERS

SECTION 14.1.

The Association shall indemnify every member of the Board, officer and committee member, his heirs, executors and administrators, against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to

which he may be made a party by reason of his being or having been a member of the Board, officer or a committee member of the Association, in accordance with and to the same extent as is permitted and as limited by the provisions of the Delaware Corporation Law (the "Corporate Law"), as amended from time to time. In the event of a settlement, indemnification shall be provided only in connection with those matters covered by the settlement as to which the Association is advised by independent counsel that the person to be indemnified may be indemnified under the Corporate Law. The foregoing rights shall not be exclusive of other rights to which the Director, officer or committee member may be entitled. All liability, loss, damage, costs and expenses incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses; provided, however, that nothing contained in this Section 14.1 shall obligate the Association to indemnify any Member of the Association, who is or has been a member of the Board, an officer or a committee member with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Association.

ARTICLE XV - AMENDMENTS

SECTION 15.1. Amendments.

This Declaration may be amended by an instrument signed by, or the affirmative vote of, Association Members entitled to cast not less than sixty-seven (67%) of the total votes of all Association Members and shall require the prior written consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Project). Any amendment must be Recorded in the Recorder's Office.

SECTION 15.2. Changes and Modifications by Declarant.

(a) The Declarant shall have the right, for a period of twenty (20) years following the date of recordation of this Declaration, without the consent or joinder of the Association Members, any Mortgagee, or the Association, or any other party, to modify, amend or change any of the provisions of this Declaration, as the Declarant may deem necessary or desirable, if such amendments are:

- (i) Required by federal, state, county or local laws; or
- (ii) Required by any Mortgagee of all or any portion of the Property or Project; or
- (iii) Required by any title company issuing title insurance to Owners and/or Mortgagees of same; or
- (iv) required to correct errors or technical deficiencies or imperfections or to clarify ambiguities in the Governing Documents.

(b) Declarant reserves the right to waive or modify any requirement as to any individual Lot or, the Association Property in general necessary to avoid any hardship resulting from unintentional noncompliance with this Declaration.

ARTICLE XVI - DURATION AND TERMINATION

SECTION 16.1. Duration; Dissolution.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term not to exceed twenty-five (25) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated, at least six (6) months before the commencement of any extension, by a vote of not less than seventy-five percent (75%) of Owners by evidence which shall be Recorded. In the event that the Declarant is the Owner of any Lots at the time of the intended dissolution, such dissolution shall not occur without prior approval of the Declarant.

(b) Upon dissolution of the Association and termination of this Declaration, the real and personal property of the Association shall become the assets of the Owners, who are Owners at the time of the dissolution, as tenants-in-common. Provided, however, the Association shall not be dissolved nor shall it dispose of the Common Facilities, by sale or otherwise, without first offering to dedicate the same to the Town.

ARTICLE XVII - NOTICE

SECTION 17.1. Notice of Proposed Amendment.

Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board in which a proposed amendment is considered, and shall be served upon all Members in the manner hereinafter provided for service of notices.

SECTION 17.2. Notices.

All notices required to be served upon Owners pursuant to this Declaration or the Bylaws shall be sufficient if delivered to the Dwelling or mailed to the Owner at the Dwelling mailing address by regular mail and if delivered or mailed to the Declarant at the business office of the Declarant. The effective date of a notice shall be the date of delivery to the Dwelling or the Declarant's business office in the case of actual delivery and a date five (5) days after deposit in the mail in the case of notice sent by mail.

SECTION 17.3. Notice to Eligible Mortgage Holders; Deemed Consent.

(a) The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

(i) Any condemnation loss or any casualty loss which affects a material portion of the Association Property or any Lot subject to a first mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.

(ii) Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a First Mortgage interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association.

(iv) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.

ARTICLE XVIII - GENERAL PROVISIONS

SECTION 18.1. Interpretation of the Declaration and Bylaws.

In the event of a conflict of interpretation between the provisions set forth in the Bylaws and this Declaration, this Declaration shall govern except to the extent this Declaration is inconsistent with applicable law. In the event that the Internal Revenue Code is hereafter amended or changed, both this Declaration and the Bylaws shall be interpreted in a manner which conforms to the provisions of the Internal Revenue Code with respect to non-profit entities, it being the intention to preserve the lawful status of the association as a bona fide non-profit entity.

SECTION 18.2. Notice of Special Provisions Regarding the Property and Project.

(a) The Property and Project are located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of the Property and Project is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

(b) The streets within the Project, as shown on the Plan, are intended to be dedicated to public use and are to be maintained by the State of Delaware following completion of the streets to the satisfaction of the State of Delaware. The streets will not be accepted into the State of Delaware maintenance system until seventy-five (75%) percent of the Dwellings within the Project have been constructed and shall be the responsibility of the Declarant, the Owners, or both, until accepted into the State of Delaware maintenance system. The sidewalk and shared-use path shall be the responsibility of the Declarant, the Owners, or both, and the State of Delaware will assume no responsibility for the future maintenance of the sidewalk and/or shared-use path.

(c) The Property contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware.

SECTION 18.3. Waiver of Claims as to Mold.

Declarant has not represented, warranted or guaranteed that the Lots, Dwellings, Community Facilities or any portion of the Community are free from mold, fungi, or other naturally occurring biological agents or pollutants (collectively "Mold") or that Mold will not develop in the Lots, Dwellings, Community Facilities or any portion of the Community in the future. Mold is a part of the natural environment and may grow indoors in moist conditions. According to the United States Environmental Protection Agency ("EPA") it is impossible to get rid of all mold and mold spores indoors but certain steps may be useful in reducing the occurrence of mold growth. (EPA Document 402-K-01-001). Based upon this information, certain maintenance, repair and replacement responsibilities have been established in this Declaration and the Bylaws to be performed by the Association, under the direction of the Board, and the Owners with regard to addressing water penetration, water leaks, moisture problems and humidity, all of which conditions provide opportunity for Mold growth. Failure to perform such responsibilities shall be at the Owners' sole risk and the Owners shall be solely responsible for any property damages, personal injury damages, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects or consequential damages of any kind caused as a result thereof.

SECTION 18.4. General.

If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof, the Bylaws or any rules and regulations. All of these provisions remaining in effect shall continue as if the invalid provisions had not been included herein unless the provisions declared invalid or deleted from this document shall frustrate the intent of the contract in which case only those provisions necessary to effectuate the intent of the contract shall remain effective. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration. This Declaration shall become effective when it has been duly Recorded. This Declaration shall inure to the benefit of and shall be binding upon the Declarant, their successors and assigns.

SECTION 18.5. Construction.

Number and gender, as used in this Declaration, shall extend to and include both singular and plural and genders as the context and construction require.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and its seal affixed hereto as of the day and year first written above.

[SIGNATURE PAGE FOLLOWS]

WHISPERING WOODS HOMES LLC

Witness

By:  (SEAL)
Kevin E. McLaughlin, Esq.,
Vice President and Authorized Person

COMMONWEALTH OF PENNSYLVANIA

•

SS.

COUNTY OF DELAWARE

•

On this the 26th day of August, 2019, before me, a Notary Public for the Commonwealth and County aforesaid, personally appeared Kevin E. McLaughlin, Esq., Vice President and Authorized Person of Whispering Woods Homes LLC, and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

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

Christina M. Sica

NOTARY PUBLIC

PRINT NAME: Christina M. Sica

COMMISSION EXPIRES: 11/9/19

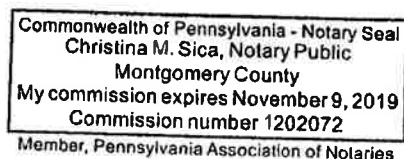


EXHIBIT "A"

PROPERTY

ALL that certain farm or tract of land situate in St. Georges Hundred, New Castle County, Delaware and being more particularly bounded and described in accordance with a survey made by Morris & Ritchie Associates, Inc. on the 28th day of April, A.D. 2016, as follows, to wit:

BEGINNING for the same at a point in the south right-of-way line of the State Highway leading from McDonough to Mount Pleasant, being shown on the State of Delaware State Highway Department Construction Plan for Contract Number 66-01-008, being Road 15 as shown thereon and also known as Boyds Corner Road, said point being the beginning of the first or South eight degrees and fifty-two minutes East, twenty nine hundred fifty-seven foot line of that tract of land conveyed by and described in a deed dated September 9, 1964 from Frances M. North, Widow to James D. Deeney and Mary E. Deeney, his wife, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Record Book Q-73, Page 536, said point also being at the intersection of the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road and the first or south ten degrees East one hundred and eighty-two and eight-tenths perch line of Parcel No. 1 of those tracts or parcels of land conveyed by and described in a deed dated April 6, 2006 from Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Frank Rausch, Jr., Settlor, as amended, and Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Margaret A. Rausch, Settler, as amended, to Rausch Enterprises, L.L.C., a Delaware limited liability company, and recorded in the said Office of the Recorder of Deeds as Record Number 20060411-0034295, thence leaving the said right-of-way line of Road 15 – Boyds Corner Road and binding of the said first line of the first mentioned conveyance to Deeney, and the remainder of the first line of the second mentioned conveyance to Rausch Enterprises, L.L.C., as now surveyed, with all bearings herein being referred to the Delaware State Plane Coordinate System (NAD'83/COORS11)

1. South 18° 02' 43" East 2958.09 feet to a point at the end of the sixth or South 83° 58' 44" West, 1009.62 foot line of Parcel No. 3 of all those certain lots, pieces or parcels of land conveyed by and described in a deed dated December 22, 1975 from Bronislaw Koper, Widower to Delmarva Power and Light Company, a corporation of the State of Delaware, and recorded in the aforesaid Office of the Recorder of Deeds in Record Book S-91, Page 330, thence binding on the second line of the aforesaid conveyance to Deeney and reversely on the said sixth line of the last mentioned conveyance to Delmarva Power and Light Company,
2. North 83° 58' 20" East 1009.63 feet, thence binding reversely on the fifth, fourth and third lines of Parcel No. 3 of said conveyance to Delmarva Power and Light Company, which lines are said to be the division lines of said Delmarva Power and Light Company and the lands of Deeney, three courses, viz:
3. South 15° 28' 21" West 363.00 feet,

4. South 53° 28' 21" West 264.00 feet, and
5. South 13° 01' 39" East 515.54 feet to a ½" iron pipe heretofore set, said pipe being at the end of the seventh or North 86° 46' 42" East 2147.61 foot line of Parcel No. 2 of the last mentioned conveyance to Delmarva Light and Power Company, thence binding reversely thereon, which line is said to be the division line between the land of the Delmarva Light and Power Company and the land of Deeney,
6. South 86° 46' 22" West 2147.85 feet to a concrete monument heretofore set with a brass disk marked DP&L-PLS135, and to intersect the eighteenth or North four degrees East twenty-four hundred seventy foot line of the first mentioned conveyance herein to Deeney, thence binding on the remainder of said eighteenth and all of the nineteenth lines of said conveyance to Deeney, two courses, viz:
7. North 18° 24' 01" West 1154.81 feet to a 2" iron pipe heretofore set, and
8. North 00° 18' 35" West 802.07 feet to a stone heretofore planted, said stone being at the end of the fourth or South 89 degrees 48 minutes 19 seconds West 555.37 foot line of a Confirmatory/Corrective Deed amending the legal description dated October 28, 1993 and recorded in the aforesaid Office of Recorder of Deeds in Record Book 1627 Page 0234, thence binding reversely on said fourth, the third, second and first lines of said conveyance, four courses, viz:
9. North 81° 54' 58" East 555.42 feet to a ½" iron pipe heretofore set,
10. North 10° 14' 06" West 1028.05 feet to a ½" iron pipe heretofore set
11. North 79° 27' 32" East 100.00 feet to a ½" iron pipe heretofore set, and
12. North 12° 03' 36" West 873.39 feet, to a point on the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road, distant South 12° 03' 36" East 0.14 feet from a ½" iron pipe heretofore set, thence binding on the said right-of-way, two courses, viz:
13. By a non-tangent curve to the right with a radius of 5699.58 feet and an arc length of 58.85 feet, said curve being subtended by a chord bearing South 87° 36' 27" East 58.85 feet, to a point of tangency, and
14. South 87° 18' 42" East 444.31 feet to the place of beginning.

CONTAINING 114.529 acres of land, more or less.

BEING all of the land shown on the Plan entitled "Whispering Woods, Record Major Subdivision Plan," and recorded in the said Office of the Recorder of Deeds as Microfilm No. 20170830-0044757.

New Castle County Tax Parcel Numbers

Parcel #	Address	Lot #
1301222079	1480 WHISPERING WOODS RD	PRIOPSP
1301222051	341 TRANQUILITY WAY	PRIOPSP
1301222070	1401 WHISPERING WOODS RD	PRIOPSP
1301224018	401 CONTEMPLATION WAY	PRIOPSP
1301222038	363 TRANQUILITY WAY	PRIOPSP
1301222114	570 CONTEMPLATION WAY	PUMPSTA
1301222115	506 BOYDS CORNER RD	PUBROW
1301222025	317 TRANQUILITY WAY	PRIOPSP
1300744009	1315 WHISPERING WOODS RD	PRIOPSP
1300744008	1314 WHISPERING WOODS RD	1
1300744008	113 SERENITY CIR	1
1300744007	1308 WHISPERING WOODS RD	2
1300744007	103 SERENITY CIR	2
1300744010	102 SERENITY CIR	3
1300744011	104 SERENITY CIR	4
1300744012	106 SERENITY CIR	5
1300744013	108 SERENITY CIR	6
1300744005	110 SERENITY CIR	7
1300744006	112 SERENITY CIR	8
1301222001	114 SERENITY CIR	9
1301222002	116 SERENITY CIR	10
1301222002	1322 WHISPERING WOODS RD	10
1301222006	1326 WHISPERING WOODS RD	11
1301222006	302 TRANQUILITY WAY	11
1301222005	304 TRANQUILITY WAY	12
1301222004	306 TRANQUILITY WAY	13
1301222003	308 TRANQUILITY WAY	14
1301222007	314 TRANQUILITY WAY	15
1301222008	316 TRANQUILITY WAY	16
1301222009	318 TRANQUILITY WAY	17
1301222010	320 TRANQUILITY WAY	18
1301222011	322 TRANQUILITY WAY	19
1301222012	324 TRANQUILITY WAY	20
1301222013	326 TRANQUILITY WAY	21
1301222014	328 TRANQUILITY WAY	22
1301222015	330 TRANQUILITY WAY	23
1301222016	332 TRANQUILITY WAY	24

1301222017	334 TRANQUILITY WAY	25
1301222018	336 TRANQUILITY WAY	26
1301222019	338 TRANQUILITY WAY	27
1301222020	340 TRANQUILITY WAY	28
1301222021	342 TRANQUILITY WAY	29
1301222022	344 TRANQUILITY WAY	30
1301222023	346 TRANQUILITY WAY	31
1301222024	348 TRANQUILITY WAY	32
1301222071	352 TRANQUILITY WAY	33
1301222072	354 TRANQUILITY WAY	34
1301222073	356 TRANQUILITY WAY	35
1301222074	358 TRANQUILITY WAY	36
1301222075	362 TRANQUILITY WAY	37
1301222076	364 TRANQUILITY WAY	38
1301222077	366 TRANQUILITY WAY	39
1301222078	368 TRANQUILITY WAY	40
1301222050	1432 WHISPERING WOODS RD	41
1301222049	1430 WHISPERING WOODS RD	42
1301222048	1428 WHISPERING WOODS RD	43
1301222047	1426 WHISPERING WOODS RD	44
1301222046	1424 WHISPERING WOODS RD	45
1301222045	1422 WHISPERING WOODS RD	46
1301222044	1420 WHISPERING WOODS RD	47
1301222043	1418 WHISPERING WOODS RD	48
1301222042	1416 WHISPERING WOODS RD	49
1301222041	1414 WHISPERING WOODS RD	50
1301222040	1412 WHISPERING WOODS RD	51
1301222039	1410 WHISPERING WOODS RD	52
1301222029	303 TRANQUILITY WAY	53
1301222028	305 TRANQUILITY WAY	54
1301222027	307 TRANQUILITY WAY	55
1301222026	309 TRANQUILITY WAY	56
1301222030	323 TRANQUILITY WAY	57
1301222031	325 TRANQUILITY WAY	58
1301222032	327 TRANQUILITY WAY	59
1301222033	329 TRANQUILITY WAY	60
1301222034	331 TRANQUILITY WAY	61
1301222035	333 TRANQUILITY WAY	62
1301222036	335 TRANQUILITY WAY	63
1301222037	337 TRANQUILITY WAY	64

1301222052	349 TRANQUILITY WAY	65
1301222053	353 TRANQUILITY WAY	66
1301222054	355 TRANQUILITY WAY	67
1301222055	1403 WHISPERING WOODS RD	68
1301222056	1405 WHISPERING WOODS RD	69
1301222057	1407 WHISPERING WOODS RD	70
1301222058	1409 WHISPERING WOODS RD	71
1301222059	1411 WHISPERING WOODS RD	72
1301222060	1413 WHISPERING WOODS RD	73
1301222061	1415 WHISPERING WOODS RD	74
1301222062	1417 WHISPERING WOODS RD	75
1301222063	1419 WHISPERING WOODS RD	76
1301222064	1421 WHISPERING WOODS RD	77
1301222065	1423 WHISPERING WOODS RD	78
1301222066	1425 WHISPERING WOODS RD	79
1301222067	1427 WHISPERING WOODS RD	80
1301222068	1429 WHISPERING WOODS RD	81
1301222069	1431 WHISPERING WOODS RD	82
1301222087	1441 WHISPERING WOODS RD	83
1301222088	1443 WHISPERING WOODS RD	84
1301222089	1445 WHISPERING WOODS RD	85
1301222090	1447 WHISPERING WOODS RD	86
1301222091	1451 WHISPERING WOODS RD	87
1301222092	1453 WHISPERING WOODS RD	88
1301222093	1455 WHISPERING WOODS RD	89
1301222094	1457 WHISPERING WOODS RD	90
1301222095	1459 WHISPERING WOODS RD	91
1301222096	1461 WHISPERING WOODS RD	92
1301222097	1463 WHISPERING WOODS RD	93
1301222098	1465 WHISPERING WOODS RD	94
1301222099	1467 WHISPERING WOODS RD	95
1301222100	1469 WHISPERING WOODS RD	96
1301222101	1471 WHISPERING WOODS RD	97
1301222102	1475 WHISPERING WOODS RD	98
1301222103	1477 WHISPERING WOODS RD	99
1301222104	1479 WHISPERING WOODS RD	100
1301222105	1481 WHISPERING WOODS RD	101
1301222106	1483 WHISPERING WOODS RD	102
1301222107	1485 WHISPERING WOODS RD	103
1301222108	1489 WHISPERING WOODS RD	104

1301222109	1491 WHISPERING WOODS RD	105
1301222110	1493 WHISPERING WOODS RD	106
1301222111	1495 WHISPERING WOODS RD	107
1301222112	1497 WHISPERING WOODS RD	108
1301222113	1499 WHISPERING WOODS RD	109
1301224042	566 CONTEMPLATION WAY	110
1301224043	564 CONTEMPLATION WAY	111
1301224044	562 CONTEMPLATION WAY	112
1301224045	560 CONTEMPLATION WAY	113
1301224046	558 CONTEMPLATION WAY	114
1301224047	556 CONTEMPLATION WAY	115
1301224048	554 CONTEMPLATION WAY	116
1301224049	548 CONTEMPLATION WAY	117
1301224050	544 CONTEMPLATION WAY	118
1301224051	540 CONTEMPLATION WAY	119
1301224052	534 CONTEMPLATION WAY	120
1301224053	530 CONTEMPLATION WAY	121
1301224054	526 CONTEMPLATION WAY	122
1301224055	522 CONTEMPLATION WAY	123
1301224041	517 CONTEMPLATION WAY	124
1301224040	525 CONTEMPLATION WAY	125
1301224039	529 CONTEMPLATION WAY	126
1301224038	531 CONTEMPLATION WAY	127
1301224037	535 CONTEMPLATION WAY	128
1301224036	537 CONTEMPLATION WAY	129
1301224035	541 CONTEMPLATION WAY	130
1301224034	545 CONTEMPLATION WAY	131
1301224033	549 CONTEMPLATION WAY	132
1301224032	553 CONTEMPLATION WAY	133
1301224031	557 CONTEMPLATION WAY	134
1301224030	561 CONTEMPLATION WAY	135
1301224019	415 CONTEMPLATION WAY	136
1301224020	419 CONTEMPLATION WAY	137
1301224021	423 CONTEMPLATION WAY	138
1301224022	427 CONTEMPLATION WAY	139
1301224023	431 CONTEMPLATION WAY	140
1301224024	435 CONTEMPLATION WAY	141
1301224025	441 CONTEMPLATION WAY	142
1301224026	445 CONTEMPLATION WAY	143
1301224027	449 CONTEMPLATION WAY	144

1301224028	453 CONTEMPLATION WAY	145
1301224029	509 CONTEMPLATION WAY	146
1301224063	514 CONTEMPLATION WAY	147
1301224062	512 CONTEMPLATION WAY	148
1301224061	510 CONTEMPLATION WAY	149
1301224060	508 CONTEMPLATION WAY	150
1301224059	506 CONTEMPLATION WAY	151
1301224058	502 CONTEMPLATION WAY	152
1301224058	803 REFLECTION CT	152
1301224057	807 REFLECTION CT	153
1301224056	811 REFLECTION CT	154
1301224017	818 REFLECTION CT	155
1301224016	816 REFLECTION CT	156
1301224015	450 CONTEMPLATION WAY	157
1301224015	804 REFLECTION CT	157
1301224014	446 CONTEMPLATION WAY	158
1301224013	436 CONTEMPLATION WAY	159
1301224012	432 CONTEMPLATION WAY	160
1301224011	428 CONTEMPLATION WAY	161
1301224010	424 CONTEMPLATION WAY	162
1301224010	601 DAYDREAM CT	162
1301224009	605 DAYDREAM CT	163
1301224008	607 DAYDREAM CT	164
1301224005	608 DAYDREAM CT	165
1301224006	606 DAYDREAM CT	166
1301224007	416 CONTEMPLATION WAY	167
1301224007	602 DAYDREAM CT	167
1301224004	414 CONTEMPLATION WAY	168
1301224003	410 CONTEMPLATION WAY	169
1301224002	406 CONTEMPLATION WAY	170
1301224001	1498 WHISPERING WOODS RD	171
1301224001	402 CONTEMPLATION WAY	171
1301222086	1494 WHISPERING WOODS RD	172
1301222085	1492 WHISPERING WOODS RD	173
1301222084	1490 WHISPERING WOODS RD	174
1301222083	1488 WHISPERING WOODS RD	175
1301222082	1486 WHISPERING WOODS RD	176
1301222081	1484 WHISPERING WOODS RD	177
1301222080	1482 WHISPERING WOODS RD	178

EXHIBIT "B"

WHISPERING WOODS COMMUNITY ASSOCIATION

COMPONENT AND RESPONSIBILITY CHART

Ownership Key:

- A = Owned by the Association, to which all Owners are Members. Includes the Community Facilities.
- O = Owned by one or more Owners. Includes a Dwelling and a Lot upon which the Dwelling is constructed. There are three types of Dwellings – Detached Dwellings, Carriage House Dwellings, and Twin Dwellings.
- P = Owned by a public utility company or governmental authority, entity or agency.

Assessment Key:

- CE = Common Expense - fees charged to cover the Association costs which are shared equally by all Owners.
- LC = Limited Charge - direct charges to Owners for Association costs which are excluded from the budget (and monthly Assessments for Common Expenses), charged only to the one or more Owners (i.e., less than all Owners) who derive the benefit when the service is provided by the Association.

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>ASSOCIATION RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Roofing Flashing	O	Repair Replacement	LC LC	Payment of LC
Skylights	O	None		Cleaning Repair Replacement ⁽²⁾
Gutters Downspouts	O	Cleaning Repair Maintenance Replacement	LC LC LC LC	Payment of LC
Chimney V-Channels and Fireplaces	O	None		Cleaning Repair Maintenance
Windows, Window glass, Sliding glass doors, Patio doors, Screened-in Porches, Sunrooms	O	None		Cleaning Repair Replacement ⁽²⁾
Front entrance door Hinged patio door	O	Repainting	LC	Cleaning Replacement ⁽²⁾ Repair Payment of LC
Locks, hinges, or other hardware on windows and doors	O	None		Repair Replacement
Garage door	O	Repainting (long term)	LC	Replacement ⁽²⁾ Repair Payment of LC

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>ASSOCIATION RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Garage door lock, hardware, Mechanisms	O	None		Maintenance Repair Replacement
Exterior or synthetic trim and entrance porch columns	O	Repainting Repair Replacement	LC LC LC	Cleaning Payment of LC
Exterior entrance lighting, controlled from inside the home	O	None		Electricity Cleaning Repair Replacement ⁽²⁾
Any other significant home exterior component not listed above including siding, brick, soffits, fascia, or shutters	O	Repair Replacement	LC LC	Cleaning Payment of LC
Front Porch, entranceway, landing, stoop	O	Snow clearing Replacement	CE LC	Cleaning Ice melting Payment of CE/LC
Patio or Deck	O	Maintenance Replacement	LC LC	Cleaning Snow clearing Ice melting Payment of LC
Sewer and water laterals from the clean out or curb stop to the home	O	None		Operation Repair Maintenance Replacement
Sanitary sewer and water lines on the street side of the clean out or curb stop	P	None	N/A	None

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>ASSOCIATION RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Sidewalks to individual homes	O	Snow clearing ⁽¹⁾ Repair Replacement	CE LC LC	Cleaning Ice melting Payment of CE/LC
Driveways and driveway aprons	O	Snow clearing ⁽¹⁾ Repair Resealing Resurfacing	CE LC LC LC	Cleaning Ice melting Payment of CE/LC
Original planted beds adjacent to Dwellings	O	Maintenance	CE	Watering Planting Payment of CE
Original landscape (turf, trees, shrubs, bushes) on the Lots	O	Maintenance Limited Replacement	CE CE	Watering near home Payment of CE
Landscape (turf, trees, shrubs, bushes) <u>not</u> on Lots but in Community Facilities	A	Maintenance Limited Replacement	CE CE	Payment of CE
Planted islands in public street	A or P	Watering Maintenance Replacement	CE CE CE	Payment of CE
Streets (prior to dedication)	Declarant	None		None
Streets (after dedication)	P	None		None
Curbing along Community Facilities (concrete)	A	Repair Replacement	CE CE	None Payment of CE

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>ASSOCIATION RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Curbing along Lots (concrete)	O	Repair Replacement	CE CE	Payment of CE
Street lights	P	None		None
Common sidewalks located along public street	A	Snow clearing ⁽¹⁾ Maintenance Replacement	CE CE CE	Payment of CE
Entrance Area Signage, entrance monuments, and other entrance features including a small sprinkler irrigation system (if any)	A	Operation Water Maintenance Replacement	CE CE CE CE	Payment of CE
Clubhouse	A	Operation Utilities Repair Maintenance Replacement	CE CE CE CE CE	Payment of CE
Pool, pool area and related storage building	A	Operation Repair Maintenance Replacement	CE CE CE CE	Payment of CE
Bocce facilities, Horseshoe courts, Walking trail	A	Repair Maintenance Replacement	CE CE CE	Payment of CE
Clubhouse parking spaces	A	Snow clearing Repair Resealing Resurfacing	CE CE CE CE	Payment of CE

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>ASSOCIATION RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Stormwater Management Areas, Basins and Ponds (if any), Storm Piping and inlets (to the extent not dedicated to the public)	A	Operation Maintenance Repair Replacement	CE CE CE CE	Payment of CE
Stormwater Management Areas, Basins and Ponds (if any), Storm Piping and inlets (to the extent dedicated to the public)	P	None		None

- (1) Snow will be cleared per the service guidelines of the Board and only where there are vehicles parked in such a way that the area can be cleared when contractor is present to do the work.
- (2) Replacement is subject to the Whispering Woods architectural review guidelines.

ENCLOSURE 3

**Proposed Amended and Restated Declaration of Covenants,
Conditions, Easements, and Restrictions of Whispering Woods**

(Executed Original)

New Castle County
Tax Parcel Numbers:
See Exhibit "A" attached hereto

Prepared by and Return to:
Whiteford, Taylor & Preston, LLC
600 N. King St., Ste. 300
Wilmington, DE 19801

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS OF
WHISPERING WOODS**

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS (this "Declaration"), is made this 7th day of July, 2023, by Whispering Woods Community Association, a Delaware nonstock corporation (the "Community Association").

RECITALS

A. Pursuant to that certain Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware (the "Recorder's Office") as Instrument No. 20180208-0006709, Whispering Woods Homes LLC, a Delaware limited liability company (the "Declarant") became the legal and equitable owner of those certain lots, pieces or parcels of land bounded and described on Exhibit "A," attached hereto and made a part hereof (the "Property"), being all of the real property shown and identified on that certain Record Minor Subdivision Plan for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated December 7, 2020, said plan being recorded in the Recorder's Office as Instrument No. 20201229-0118654 (as such plan may be subsequently supplemented or amended from time to time, the "Plan").

B. Declarant constructed a residential community known as "Whispering Woods" on the Property including Dwellings and Community Facilities (as such terms are defined below).

C. Declarant recorded that certain Declaration of Covenants, Conditions, Easements and Restrictions dated August 26, 2019, in the Recorder's Office as Instrument No. 20190828-0068076 (the "Original Declaration"), without County (as defined herein) knowledge or approval, which Original Declaration provided for the Community Association to be the governing body for all of the Owners responsible for certain maintenance and other obligations regarding Lots (as defined below) and the exterior of Dwellings, and the maintenance, repair, replacement, management, operation, and administration of the Community Facilities, and the Original Declaration was not referenced on the Record Major Subdivision Plan for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated April 1, 2017, said plan being recorded in the Recorder's Office as Instrument No. 20170830-0044757, nor any subsequent modification thereof.

D. The Whispering Woods Maintenance Corporation, a Delaware nonstock corporation (the "Maintenance Corporation"), was incorporated on November 23, 2021, by the filing of that certain Certificate of Incorporation of Whispering Woods Maintenance Corporation with the Secretary of State of the State of Delaware for the general purpose of providing for the maintenance of the common facilities and private open spaces located within the Property.

E. The Owners (in their capacities as members of the Community Association and as members of the Maintenance Corporation), the Executive Board of the Community Association, and the Board of Directors of the Maintenance Corporation, approved

the merger of the Community Association with and into the Maintenance Corporation, with the Maintenance Corporation being the surviving entity, pursuant to and in accordance with the provisions of that certain Plan and Agreement of Merger between Whispering Woods Community Association (a Delaware Non-Stock Corporation) and Whispering Woods Maintenance Corporation (a Delaware Non-Stock Corporation) dated as of December 22, 2022, and the General Corporation Law of the State of Delaware (the "Merger").

F. The Merger was completed on February 15, 2023, by the filing of a certificate of merger with the Secretary of State of the State of Delaware by the Maintenance Corporation, with the Maintenance Corporation being the surviving corporation.

G. Following the Merger, the Owners (in their capacities as members of the Maintenance Corporation) and the Board of Directors of the Maintenance Corporation, duly approved (i) a Certificate of Amendment to the Certificate of Incorporation of the Maintenance Corporation, pursuant to which the name of the Maintenance Corporation was changed to Whispering Woods Community Association (the "Certificate of Amendment") and (ii) those certain Corrected Amended and Restated Bylaws of the Whispering Woods Community Association dated July 7, 2023 (the "Bylaws").

H. The Certificate of Amendment was filed with the Secretary of State of the State of Delaware by the Maintenance Corporation on March 17, 2023, and the name of the Maintenance Corporation was thereby changed to Whispering Woods Community Association.

I. The Community Association recorded the Bylaws in the Recorder's Office as Instrument No. 20230901-0058975 (thereby amending and restating those certain Bylaws of the Whispering Woods Maintenance Corporation dated November 23, 2021, and recorded in the Recorder's Office as Instrument No. 20211201-0137041).

J. The Owners and the Executive Board of the Community Association (formerly the Board of Directors of Maintenance Corporation), duly approved the recording of this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions in the Recorder's Office, in order to provide for the Community Association to be the sole governing body for all of the Owners responsible for certain maintenance and other obligations regarding Lots and the exteriors of Dwellings, in addition to being responsible for the maintenance, repair, replacement, management, operation, and administration of the Community Facilities.

K. On _____, 2023, New Castle County Council passed Resolution No. _____ and thereby approved the recording of this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions in the Recorder's Office.

NOW THEREFORE, witnesseth:

ARTICLE I - THE PROPERTY

SECTION 1.1. The Property.

The Property is comprised of those certain Lots, open spaces, stormwater management areas, recreational facilities, and improvements and other amenities, located within the land bounded and described on Exhibit "A," attached hereto and made a part hereof.

ARTICLE II - THE COMMUNITY

SECTION 2.1. Name.

The name by which the Community (defined below) shall hereafter be identified is Whispering Woods.

ARTICLE III - DEFINITIONS

SECTION 3.1. Definitions.

The following terms when used herein are intended to be consistent with the meanings ascribed to them by this Section 3.1.

(a) "Assessments" or "Charges" means those levies, assessments or sums payable by one or more Owners in the Community from time to time upon notification by the Community Association, as provided herein; the obligation to pay Assessments shall be a covenant running with the land. Each Assessment shall be separate and payable by the Owner.

(b) "Building" means any structure erected or to be erected on the Property containing one or more Dwellings intended to be used for residential purposes.

(c) "Board" means 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 Community Association on behalf of the Owners.

(d) "Bylaws" means those certain Corrected Amended and Restated Bylaws of the Whispering Woods Community Association dated July 7, 2023, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, as Instrument No. 20230901-0058975, for the regulation and management of the Property and administration of the Community Association, including any amendments thereto which may be adopted from time to time.

(e) "Carriage House Dwellings" means the Dwellings erected or to be erected on Lots 15 to 97, all inclusive.

(f) "Commercial Vehicle" means a vehicle that (i) is lettered in any way that describes the business of the vehicle's use, (ii) has side toolboxes or ladder racks, (iii) is a utility body truck, high cube cutaway van, taxis, or van for hire. Emergency vehicles such as fire/EMS and police vehicles are not Commercial Vehicles.

(g) "Common Expenses" means the expenses for which the Owners are liable as provided herein, including, but not limited to:

(i) Expenses of administration, operation, maintenance, repair and replacement of the Community Facilities; and

(ii) Expenses of administration, maintenance, certain insurances, repair and replacement of specific components of the Buildings, Dwellings, and/or Lots; and

(iii) Expenses or liabilities agreed upon as common expenses by the Owners; and

(iv) Expenditures made or liabilities incurred by or on behalf of the Community Association, together with any allocations to reserves; and

(v) All other expenses or charges levied or to be levied pursuant to this Declaration or the Bylaws against Owners.

(h) "Common Receipts" means and includes the funds collected from Owners as Assessments for Common Expenses and receipts designated as common by the provisions of this Declaration and the Bylaws.

(i) "Common Surplus" means and includes the excess of all Assessments over all Common Expenses.

(j) "Community" means the planned residential development known as Whispering Woods located in New Castle County and which is included within the Property and Plan that is subject to this Declaration.

(k) "Community Association" means Whispering Woods Community Association, a Delaware nonstock corporation, formerly known as Whispering Woods Maintenance Corporation, a Delaware nonstock corporation.

(l) "Community Facilities" means any portion of the Property not included in any Lot, to the extent such facilities are neither dedicated nor to be dedicated to the public use, and which are depicted on the Plan, and all other facilities which the Community Association may hereafter own, acquire or construct, including private open space areas, the buffer areas around the perimeter of the Property (whether shown on the Plan or required to be added to the Community in the future), the storm water management system and detention and/or retention basins and drainage areas, the clubhouse and recreational facilities, swimming pool, street lighting, roads and sidewalks and the shared-use path (all to the extent not dedicated or to be dedicated to the public use).

(m) "Declarant" means Whispering Woods Homes LLC, a Delaware limited liability company.

(n) "Detached Dwellings" means the Dwellings erected or to be erected on Lots 1 to 10 and 116 to 167, all inclusive.

(o) "Development Plans" means and refers collectively to the approved site plan and plats for the Property and the Project, including the Plan, as well as any and all amendments, modifications, and extensions thereof as may be made from time to time.

(p) "DUCIOA" means the Delaware Uniform Common Interest Ownership Act, 25 Del. C. § 81-101 et seq., as amended from time to time.

(q) "Dwelling" means a structure which is designed, sold, and occupied as a residence and which is located on the Property subject to this Declaration. Each Owner of each Dwelling shall be subject to all of the rights, privileges and duties as every other Owner of each Dwelling and which are attendant upon each and every Dwelling. References herein to an individual Owner's Dwelling refers collectively to the Dwelling and the Lot on which it is situated.

(r) "Eligible Mortgage Holder" means a holder, insurer or guarantor of a First Mortgage on a Lot or Community Facilities, as applicable, who has submitted a written request for notice from the Community Association of amendments to this Declaration or the Bylaws, or other significant matters which would affect the interests of the Mortgagee.

(s) "Limited Charges" means those charges which are levied by the Community Association against one Owner or a group of Owners, but not all Owners for costs incurred by the Community Association in providing services pursuant to this Declaration, which services are solely for the benefit of the Owners so charged.

(t) "Lot" means any one of, and "Lots" shall mean more than one of, the maximum one hundred and seventy-eight (178) residential dwelling lots in Whispering Woods; and shall not include the Community Facilities, any property dedicated for public use, or other areas of the Property.

(u) "Maintenance Corporation" means Whispering Woods Maintenance Corporation, a Delaware nonstock corporation, now known as Whispering Woods Community Association, a Delaware nonstock corporation.

(v) "Member" means any Owner or the Declarant who shall be a member of the Community Association.

(w) "Merger" has the meaning ascribed to such term in Recital F, above.

(x) "Mortgagee" means the holder of any recorded mortgage encumbering one or more of the Lots or all or any portion of the Community Facilities. "Mortgage," as used herein, shall mean any mortgage held by a Mortgagee. "First Mortgage," as used herein, shall mean a Mortgage with priority over all other Mortgagees. As used in this Declaration, the term "Mortgagee" shall mean any Mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any

agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot or all or any portion of the Community Facilities. In the event any Mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the expressions "Mortgagee" and "institutional mortgagee" include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Secretary of Veterans Affairs or through other duly authorized agents.

(y) "Owner" means the record Owner, whether one or more persons or entities, of fee simple title to any Dwelling which is situate within the Property, but excluding those persons having this interest merely as security for the performance of an obligation, and also excluding the Declarant. Multiple Owners of a Dwelling shall together be deemed one Owner for purposes of this Declaration.

(z) "Original Declaration" has the meaning ascribed to such term in Recital C, above.

(aa) "Person" means a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

(bb) "Plan" means the Record Minor Subdivision Plan for Whispering Woods prepared by Morris & Ritchie Associates, Inc., dated December 7, 2020, said plan being recorded in the Recorder's Office as Instrument No. 20201229-0118654, as such plan may be subsequently supplemented or amended from time to time.

(cc) "Project" means the residential community, together with the improvements erected and maintained thereon, to be known as "Whispering Woods" consisting of the Lots and the Community Facilities, all to be built on the Property.

(dd) "Property" means and includes those certain lots, pieces or parcels of land bounded and described on Exhibit "A," attached hereto and made a part hereof, and all easements, rights and appurtenances belonging thereto, which Property has previously been submitted by the Declarant to the provisions of the Original Declaration, and which Property is now being submitted by the Community Association to the provisions of this Declaration, the terms of which shall supersede and replace the terms of the Original Declaration. The Property is located entirely in New Castle County in the State of Delaware.

(ee) "Recorded" means that an instrument has been duly entered of record in the Recorder's Office.

(ff) "Recorder's Office" means the Office of the Recorder of Deeds in and for New Castle County, Delaware.

(gg) "Twin Dwellings" means the Dwellings erected or to be erected on Lots 11 to 14, 98 to 115, and 168 to 178, all inclusive, as shown on the Plan.

(hh) "Utilities" shall mean Artesian Water Company, Chesapeake Utilities, New Castle County, their successors in interest, or such other entities that are or may become responsible for collecting, treating and disposing of sanitary sewer wastewater from, or

delivering water, propane, and/or natural gas to, Lots or the Community Facilities and improved areas within the Property.

(ii) "Wastewater Agreement" shall mean and refer to, individually and collectively, any easement agreement entered into from time to time by and between New Castle County, Delaware and Declarant, to be Recorded in the Recorder's Office, and any and all other agreements for the Project between Declarant and New Castle County that are binding on Owners other than Declarant with respect to the operation, management, control, repair, maintenance and/or replacement of the waste water system serving the Community, together with any and all amendments thereto and any replacements thereof, together with any collateral documents, permits, approvals, agreements or easements related thereto.

(jj) "Wastewater Service Line" shall mean the pipe, clean-outs, and fittings that lie between the structure foundation or exterior wall on any Lot and the wastewater collection system owned by the applicable Utilities.

ARTICLE IV - PROPERTY SUBJECT TO THIS DECLARATION; RIGHTS OF THE DECLARANT

SECTION 4.1. Applicability.

(a) The Property shall be a planned community under the provisions of DUCIOA that is held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to all of the covenants, conditions, easements and restrictions of this Declaration. All present and future Owners of Dwellings and residents, their guests, licensees, servants, agents, employees, and any other person or persons who shall be permitted to use the Community Facilities described in this Declaration, shall be subject to this Declaration, the Bylaws and any rules and regulations which the Board from time to time shall promulgate in compliance with § 81-320 of DUCIOA to govern the conduct of its members and occupancy of the Property. Ownership or occupancy of any of the Dwellings in the Property shall be conclusively deemed to mean that the Owner or occupant has accepted, ratified and will comply with this Declaration, the Bylaws and the rules and regulations of the Community Association. Owners shall not be permitted to lease their Dwellings unless such leasing is approved by the Board as hereinafter provided. Furthermore, occupancy of Dwellings shall be limited to that class of individuals specified by the zoning regulations of New Castle County regulating use and occupancy of the Property; said class of occupants and all members thereof shall be further subject to and in full compliance with the Federal Fair Housing Act and all amendments thereto. The Property may only be used and developed as an active-adult community for older persons in accordance with the Fair Housing Act provisions, 42 U.S.C. Section 3601, et. seq. In particular, at least one resident of at least eighty percent (80%) of the Dwellings to be constructed and developed on the Property shall be at least fifty-five (55) years of age or older and no person younger than eighteen (18) years of age shall reside therein on a permanent basis (more than thirty (30) days in any calendar year). The Board may from time to time enact rules to implement and/or enforce the foregoing restrictions (whether more restrictive or otherwise, at the Board's discretion), and shall be empowered to so enact and enforce such restrictions.

(b) In the event of a conflict of interpretation between the provisions set forth in this Declaration and the Bylaws, this Declaration shall govern, except to the extent this Declaration is inconsistent with applicable law.

(c) Declarant shall have the following rights for the period from the date of the Original Declaration through the date that is the earlier of (i) thirty (30) years thereafter, or (ii) the date on which Declarant no longer owns any Lot within the Community and Declarant has received the return from the County of all financial security provided by the Declarant to the County pursuant to the terms of that certain Land Development Improvement Agreement dated July 26, 2017, entered into by and among Whispering Woods Homes LP, Summit Land LLC, and the County, as may be amended (individually and collectively, the "Special Declarant Rights"):

(i) The right to complete or make improvements indicated on the Development Plans;

(ii) The right to maintain sales offices, parking areas, management offices, storage sheds/trailers, and models on Lots or on the Community Facilities, as may be located and/or relocated by Declarant from time-to-time in Declarant's sole discretion;

(iii) The right to maintain signs on the Property to advertise the sales of homes;

(iv) The right to conduct sales business and construction activities on the Property; and

(v) The right to use and permit others to use, easements through the Community Facilities as may be reasonably necessary for the purpose of discharging the Declarant's obligations under DUCIOA and this Declaration.

ARTICLE V - THE COMMUNITY FACILITIES

SECTION 5.1. Owners' Easement of Enjoyment.

Every Owner shall have the right of ingress, egress and regress over and the right of enjoyment in and to the Community Facilities which right shall be appurtenant to each Dwelling and shall pass with title to every Dwelling subject, nevertheless, to the following provisions:

(a) The right of the Community Association to make Assessments for the use of any or all of the Community Facilities, and the obligation of the Community Association under this Declaration to contribute to the expenses of maintenance, repair, and replacement of the Community Facilities.

(b) The right of the Community Association to suspend the right of an Owner to use any of the Community Facilities after the Board determines that the Owner has failed to pay in full any Assessment within thirty (30) days of the due date or has violated any of the rules and regulations of the Community Association.

(c) Intentionally omitted.

(d) The free right and privilege of the Declarant at all times hereafter, without let or hindrance, to go upon any and all of the Property, including lands conveyed or developed and to construct, reconstruct, repair, renovate or to correct work to be, or done by Declarant, its agents, servants, workmen or contractors. This right of the Declarant shall expire two (2) years after the conveyance by the Declarant in the ordinary course of business of the last Dwelling to a Dwelling purchaser other than the Declarant.

(e) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, domestic water, storm water and sanitary sewer, gas, drainage, other utility facilities, and any other services provided to any part of the Lots or Community, and the necessary appurtenances to the same. The easement shall run in favor of the Declarant, the Community Association and the Owner or other entities operating these facilities.

(f) A specific easement in favor of the Declarant, its agents, servants, licensees and invitees for all purposes incident to the process of construction and marketing of Dwellings; provided, however, that this easement shall expire upon conveyance by the Declarant in the ordinary course of business of the last Dwelling to a Dwelling purchaser other than the Declarant.

SECTION 5.2. No Waiver of Use.

No Owner may exempt himself from liability with respect to the payment of Assessments levied by the Community Association, nor release the Dwelling owned by the Owner from the liens created for non-payment of Assessments by waiver of the use or enjoyment of the Community Facilities, by abandonment of his Dwelling, by any conveyance or covenant severing the rights and benefits from the Dwelling, or otherwise. The obligation to pay Assessments is absolute and unconditional and, in addition to being a covenant running with the land, is a personal obligation of each Owner and shall not be subject to setoffs or counterclaims.

SECTION 5.3. Alterations By Owner.

No Owner may make any changes, additions, improvements, or alterations of any kind or do any work to any of the Community Facilities. No Owner shall impair any easement within the Community Facilities without the unanimous consent of all of the Owners affected thereby. In no event may an Owner make any improvements or alterations which would jeopardize the soundness or safety of any portion of the Property.

SECTION 5.4. Obsolescence.

In the event that the Board shall determine that any Community Facility is obsolete, the Board may call for a vote of the Members to determine whether or not the Community Facility should be demolished and/or replaced. In the event that eighty (80%) percent of the Members and the two-thirds (2/3) of the Eligible Mortgage Holders shall determine that the Community Facility should be demolished and/or replaced, the costs thereof shall be assessed equally against all of the Members.

ARTICLE VI - THE COMMUNITY ASSOCIATION

SECTION 6.1. The Community Association.

(a) The Community Association is the governing body for all of the Owners and is responsible for certain maintenance and other obligations regarding Lots and the exterior of Dwellings, the maintenance, repair, replacement, management, operation and administration of the Community Facilities which includes, among other things, any additions or improvements to the Community Facilities, lawn cutting and fertilization on the Community Facilities, street landscaping and planting of bushes, plants and trees on the Community Facilities.

(b) Nothing herein contained shall be construed so as to preclude the Community Association from delegating the duties described in this Section 6.1 to a manager or agent or to other persons, firms or corporations, subject to the authority of the Community Association.

(c) The Common Expenses incurred or to be incurred for, the utility services, maintenance, repair, replacement, management, operation and use of the Community Facilities, and to Dwellings and/or Lots, and the making of any additions or improvements thereto, shall be as set forth on the attached Component and Responsibility Chart, attached as Exhibit "B" and incorporated herein (the "C&R Chart"), and shall be assessed by the Community Association against and collected from the Owners in accordance with Article IX hereof. In the event of any conflict between this Declaration and the C&R Chart, the terms of the C&R Chart shall control. Expenses benefiting fewer than all of the Dwellings may be assessed exclusively against the Dwellings benefited as Limited Charges.

(d) The time and extent of the foregoing maintenance, repair and replacement obligations of the Community Association shall be determined solely by the Board. All aspects of repair, maintenance and replacement of all interior portions of an Owner's Dwelling shall be the responsibility of the Owner. All maintenance, repair and replacement of portions of the Community Facilities and commonalty pertaining to the Lots and/or Dwellings shall be the responsibility of the Community Association or the Owners, as set forth on the C&R Chart, provided, however, that any costs incurred by the Community Association in connection with any of the foregoing maintenance, repair or replacement items which may arise in connection with the negligence of the Owner(s), or occupant(s) of any particular Dwelling(s) shall be charged as Limited Charges to those Owner(s) .

(e) Each Owner shall be authorized to perform maintenance, repair and replacement work on the exterior elements of such Owner's Dwelling as to which the Board is authorized to assess a Limited Charge on the C&R Chart, but only under such rules and regulations as the Board may adopt from time to time for such purpose, which may limit, prohibit or authorize, among other things, the specific elements of the exterior of the Dwellings which may be so maintained, repaired or replaced by the Owner and/or such Owner's contractors; may regulate and specify the standards, colors and products which may be used or installed in course of performance of such maintenance, repair and replacement work; may require notice to the Board of the Owner's intention to perform or have performed such work; or which may address any other matters in connection with such work the Board deems necessary to assure that the exteriors of all of the Dwellings are maintained at all times in good repair and appearance and to

professional standards. The Board shall be authorized to include in such rules and regulations provisions to assure the quality of the work performed; to provide for the professional inspection of such work on behalf of the Board and for procedures to address the correction of any non-compliant work; to require the registration of contractors authorized to perform such services who comply with any required industry experience or skill levels, indemnity, licensing and insurance requirements as the Board in the exercise of its judgment may prescribe for the protection of the Community Association; and to impose and assess charges on the Owner for the monitoring, inspection and correction of such work as may be required. Nothing set forth in this subsection (e) shall be deemed to authorize any alteration, change, or other modification of or to the exterior of a Dwelling which requires the approval of the Board as set forth elsewhere in this Declaration.

(f) To the extent maintenance, repair and replacement by an Owner may involve possible damage to the Community Facilities or other Dwellings, the work shall be performed only with the prior consent of the Board or its duly authorized agent, except in the case of an emergency, subject to the requirements of the Board.

(g) The Board shall have the right to impose rules and regulations in accordance with § 81-320 of DUCIOA governing the use and care of portions of the Dwellings, Lots and Community Facilities to the extent reasonably related to the Community Association's maintenance, repair and replacement obligations hereunder.

(h) To the extent the culverts and the storm water management system or portions thereof have not been dedicated to the public or to New Castle County by the Plan, maintenance and repair of same shall rest with the Community Association.

(i) The roads and street lighting system constructed within the Community have been dedicated to the public and are to be maintained by the State of Delaware.

SECTION 6.2. Membership in the Community Association.

(a) All Owners upon acceptance of the deed to their Dwellings shall become Members of the Community Association and shall be obligated to pay all Assessments levied by the Community Association against their Dwellings. Except as otherwise provided, membership in the Community Association shall be limited to (i) the Owners of Dwellings subjected to this Declaration and (ii) the Declarant. Every Owner, as a Member of the Community Association, shall be entitled to all of the rights and shall be bound by all of the obligations accompanying membership. The ownership interest of each Owner in the Community Association is computed by multiplying one hundred (100) and the quotient resulting from dividing one (1) by the total number of all Lots.

(b) Notwithstanding any other provision of this Declaration or the Bylaws, no action shall be taken or adopted by the Community Association which would in any way affect any of the rights, privileges, powers or options of the Declarant (including, but not limited to, development of the Property or the marketing program of the Declarant) without the prior written approval of the Declarant.

(c) Every lawful transfer of title to a Dwelling shall include membership in the Community Association and, upon making this transfer, the previous Owner's membership shall automatically terminate. Except as otherwise expressly provided, membership in the Community Association may not be assigned or transferred without the transfer of legal title to a Dwelling and any attempt at assignment or transfer thereof shall be void and of no effect.

(d) Membership in the Community Association shall automatically terminate when an Owner sells, transfers or otherwise conveys his Dwelling.

(e) Anything hereinafter to the contrary notwithstanding, Declarant, with respect of Dwellings and/or Lots it owns, shall not be assessed by the Community Association; provided, however, that Declarant shall pay Assessments with respect to Dwellings leased by Declarant to third party tenants.

SECTION 6.3. Voting.

(a) Article V, Section 5.2 of the Bylaws contains the provisions governing votes held by the Community Association.

SECTION 6.4. Board of Directors.

(a) The affairs of the Community Association shall be governed by a board of directors (the "Board" and referred to as the "Executive Board" in DUCIOA). Article VII of the Bylaws contain the provisions governing the procedures of the Board.

(b) The Board shall have all of the powers and duties necessary for the administration of the affairs of the Community Association and may do all such acts and things as are established by this Declaration and the Bylaws directed to be exercised and done by the Community Association, except as otherwise provided herein or in the Bylaws. The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the professional managing agent, if any, which might arise between meetings of the Board. In addition to the duties imposed by this Declaration, the Maintenance Declaration, the Bylaws, or by any resolution of the Community Association that may hereafter be adopted, the Board shall have the power to, and be responsible for, the following:

(i) Preparation of an annual budget, in which there shall be established the Assessment of each Owner, to be approved in accordance with § 81- 324 of DUCIOA.

(ii) Making Assessments against Owners to defray the costs and expenses of the Community Association and establishing the means and methods of collecting Assessments as established in this Declaration from the Owners. Unless otherwise determined by the Board, the annual Assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, as determined by the Board, each such installment to be due and payable in advance on the date(s) established by the Board.

(iii) Providing for the operation, care, upkeep, replacement and maintenance of the Community pursuant to the C&R Chart.

(iv) Designating, hiring and dismissing the personnel or contractors necessary for the maintenance, operation, repair and replacement of the Community Facilities, Lots, and Dwellings (in accordance with the C&R Chart) and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners; and, moreover, contracting the professional managing agent, if deemed necessary by the Board.

(v) Collecting the Assessments (including, but not limited to, Limited Charges) against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Community.

(vi) Making and amending rules and regulations in accordance with § 81-320 of DUCIOA respecting the use of the Property so that such do not unduly restrict the use and enjoyment by the Owners, their permitted tenants and guests.

(vii) Opening of bank accounts on behalf of the Board and designating the signatories required therefor.

(viii) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Community Facilities and repairs to, and restoration of, the Community Facilities, in accordance with the other provisions of this Declaration, after damage or destruction by fire or other casualty.

(ix) Enforcing by legal means, when deemed necessary and appropriate in the opinion of the Board, the provisions of this Declaration and the Bylaws and the rules and regulations for the use of the Property adopted by it and bringing any proceedings which may be instituted on behalf of the Owners.

(x) Obtaining and carrying insurance against casualties and liabilities, and paying the premium cost thereof.

(xi) Paying the cost of all services rendered to the Community Association, and not billed to Owners.

(xii) Keeping books with detailed accounts in chronological order of the receipts and expenditures affecting the Property and Community Association, and the administration of the Property, specifying the maintenance and repair expenses of the roads and Community Facilities, and any other expenses incurred. The said books shall be available for examination by the Owners, their duly authorized agents or attorneys, in accordance with and pursuant to the processes set forth in § 81-318 of DUCIOA. All books and records shall be kept in accordance with good and accepted accounting practices, and if so directed by the Board, the same may be audited by an outside auditor employed by the Board who shall not be a resident of Whispering Woods, or an Owner of a Lot therein. The cost of such audit shall be a Common Expense. An audited financial statement, if prepared, shall be available within one hundred twenty (120) days of the end of the fiscal year.

(xiii) Notifying a Mortgagee of any property of any default by the applicable Owner whenever requested in writing by such Mortgagee to send such notice.

(xiv) Maintaining written minutes of all meetings of the Community Association and/or Board.

(xv) Resolving disputes between and among Owners and the Board and making decisions regarding disputes related to the interpretation and application of this Declaration and the Bylaws and rules and regulations promulgated pursuant thereto.

(xvi) Borrowing in an amount not to exceed twenty-five percent (25%) of the value of the Community Facilities for any proper Community Association purpose by the execution of notes and mortgages or as security for the repayment thereof or such other security or securities as the Community Association shall designate for the payment of principal thereof and interest due thereon, subject to any restrictions or limitations which may be contained in this Declaration or DUCIOA.

(xvii) To do such other things and acts not inconsistent with this Declaration or the Bylaws which the Board may be authorized to do by a resolution of the Community Association.

(c) The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Board members from and against all contractual liability to others arising out of contracts made or action taken by the Board on behalf of the Owners unless any such contract or action shall have been made in bad faith or contrary to the provisions of this Declaration or of the Bylaws. It is intended that the members of the Board shall have no personal liability with respect to any contract made or action taken by them on behalf of the Owners. Every agreement made or action taken by the Board on behalf of the Owners shall, if obtainable, provide that the members of the Board, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder, and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage interest bears to the total Lots in Whispering Woods. The Owners shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was a member of the Board, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Owners.

SECTION 6.5. Community Facilities.

The Community Association has assumed all responsibility from the Declarant for the management, operation, maintenance, insurance, repair and replacement of the Community Facilities and for the costs and expenses associated with such Community Facilities (but only to the extent such Community Facilities have not been offered to and accepted by New Castle County or the State of Delaware for public dedication).

SECTION 6.6. Committees.

Article IX, Section 9.1 of the Bylaws contain the provisions governing the establishment of committees by the Board.

ARTICLE VII – INSURANCE

SECTION 7.1. Liability and Community Facilities.

(a) 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 organizations similar to the Community Association, including, without limitation, liabilities arising out of or in connection with the Community Association’s maintenance responsibility hereunder.

(b) In the event of damage to or destruction of any portion of the Community Facilities covered by insurance payable to the Community Association as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration thereof; shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate; and shall otherwise comply with the requirements of § 81-313(h) of DUCIOA.

(c) The Board shall also obtain the following insurance coverage and endorsements which may be applicable to the Community Facilities or other insured Property, all premiums for which are to be charged as Common Expenses:

- (i) Workmen’s compensation policy to meet the requirements of law.
- (ii) Directors’ and officers’ liability and other insurance which the Board shall deem necessary to satisfy the indemnification obligations of the Community Association as provided in Article XIV of this Declaration.
- (iii) Fidelity insurance for the Board and all other persons with access to Community Association funds.
- (iv) All other insurance which the Board shall determine from time to time to be necessary or desirable.

SECTION 7.2. Dwellings.

(a) The Board shall obtain or cause to be obtained, to the extent reasonably available, master or blanket “all risk” property and casualty insurance insuring the Dwellings but excluding the improvements or betterments installed by the Owners and the contents and personal property in such Dwellings, covering the interests of the Community Association, the Board, the Owners

of each Dwelling, and eligible Mortgagees, as their interests may appear. The total amount of insurance (after application of any deductibles) shall be the insurable replacement cost of the insured property (exclusive of items normally excluded from such casualty policies), provided that the Board shall be authorized to require the Community Association to acquire such greater coverage as shall in such Board's judgment be necessary to adequately insure the Dwellings and to protect Owners and the Mortgagees against loss.

(b) If the Board shall determine, after obtaining the insurance required by subsection (a) hereof for any period of time, to discontinue such insurance (whether due to escalating costs or otherwise), the Board shall provide all Owners with at least ninety (90) days advance notice of any such discontinuation so as to permit such Owners the opportunity to obtain substitute coverage, and upon such notice, all Owners shall be obligated to procure and obtain such insurance and maintain such insurance in full force and effect thereafter. The Board may also promulgate rules and regulations setting forth the standards such insurance coverages shall meet so as to provide substantial uniformity in the types of coverages obtained by the Owners.

(c) To the extent that the use or occupancy of a Dwelling by an Owner or the occupant of any Dwelling is otherwise permitted hereunder, the Community Association shall have the right to charge the Owner of the Dwelling for any increase in insurance premiums payable by the Community Association occasioned by such use or occupancy. No Dwelling shall be used, occupied or kept in a manner which will in any way increase fire, liability or other insurance premiums payable by the Community Association, or any other Owner without the prior written permission of the Board, which permission shall be conditioned upon the Owner of the Dwelling being required to bear the full amount of any increase in premiums payable by the Community Association. No Dwelling or any part of the Property shall be used, occupied or kept in any manner which would violate any law, statute, ordinance or regulation of any governmental body or which would lead to the cancellation of any insurance policy or policies on the Property.

(d) Should Dwelling(s), or any part thereof, be destroyed, the Owner thereof shall be and is obligated to promptly rebuild the damaged or destroyed Dwelling(s) to substantially the same condition and of like manner and appearance as immediately prior to said damage or destruction, unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. In all events, any damage or destruction to a Dwelling shall be completely repaired/rebuilt as aforesaid within one (1) year from the date of said damage or destruction.

(e) Anything herein elsewhere to the contrary notwithstanding, each Owner shall be responsible to obtain liability insurance for his or her Lot and Dwelling in the form of ISO Form HO-6, or similar coverage, for betterments and improvements and personal property and personal liability.

SECTION 7.3. General Insurance Provisions.

(a) All liability insurance contracts shall contain severability of interest provisions and cross liability endorsements to cover liabilities of the Community Association or the Owners as a group. The Board and Owners shall acquire such insurance policies as required by law and the Board shall acquire such insurance as customarily acquired by organizations similar to the

Community Association, but the Board will specifically acquire Comprehensive "All Risk" Liability and Replacement Cost Insurance for which the Community Association shall be the named insured, and for which the Board will charge a determined percentage to each Owner as a Common Expense.

(b) The Board shall review, at least annually, all insurance coverage carried pursuant to this Declaration to evaluate this coverage with respect to its compliance with this Declaration, as well as with respect to what is reasonably appropriate coverage for communities comparable to the Community. In the event the Board determines after this review and evaluation that the insurance coverage required hereunder is not consistent with other reasonably appropriate coverage when compared to coverage for communities comparable to the Property, the Board shall have the power to deviate from the specific provisions of this Section 7.2 only to the extent of providing consistent and reasonably appropriate coverage; provided the Board shall give the Owners at least thirty (30) days prior written notice of any deviation.

(c) If available, and where applicable, the Board shall endeavor to obtain policies that provide that the insurer waives its right of subrogation as to any claims against Owners, the Community Association, the Declarant, the Board and their respective servants, agents and guests.

(d) Notwithstanding the duty of the Board to maintain and, repair the Community Facilities, the Board shall not be liable for injury or damage caused by the failure of the Board to maintain or repair the same, except to the extent of the proceeds of insurance carried by the Board and collected and received therefore.

SECTION 7.4. Loss.

(a) Where a loss or damage occurs to any portion of the Community Facilities, or other insured Property, it shall be an obligation of the Community Association to repair and restore the damage caused by the loss unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. In the event of such loss or damage:

- (i) The Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall have the right and obligation to negotiate and contract for the repair and restoration of the Community Facilities, or other insured Property.
- (ii) If the net proceeds, having subtracted the deductible (as determined by the Board), of the insurance are insufficient to pay for the estimated cost of repair and restoration (or for the actual cost thereof if the work has actually been done), the Board shall promptly, upon determination of the deficiency, levy a special Assessment against all Owners for that portion of the deficiency which is attributable to the cost of repair and restoration of the Community Facilities, or other insured Property. The special Assessment funds shall be added by the Board to the insurance proceeds available for the repair and restoration.

- (iii) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient, but additional funds are raised by special Assessment, so that sufficient funds are on hand to fully pay for the restoration and repair, then no Mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan.

(b) If for any reason the Community Facilities or other insured Property are not able to be repaired or replaced, the Board shall have the power to do the following:

- (i) The insurance proceeds attributable to damaged Community Facilities or other insured Property shall be used to restore the damaged area to a condition compatible with the remainder of the Property as determined by the Board;
- (ii) The insurance proceeds attributable to Community Facilities or other insured Property which are not rebuilt shall be utilized by the Community Association to offset Common Expenses or added to reserve accounts, as determined by the Board; and
- (iii) The remainder of the proceeds shall be distributed equally to the Owners and their mortgagees as their respective interests may appear.

(c) The Board is hereby empowered to compromise and settle claims arising under insurance policies purchased by the Community Association, and to execute and deliver releases therefore, upon the payment of claim

ARTICLE VIII - EASEMENTS

SECTION 8.1. Utilities.

(a) All of the Property shall be subject to an easement for the present and future installation and maintenance of electric service, master and/or cable television service, telephone service, water service, storm water and sanitary sewage services and other utility services and the facilities and appurtenances necessary to the same, which easement shall run in favor of the Declarant, the Community Association and the entity or entities owning or operating these facilities and providing the aforementioned services, including, but not limited to, the Utilities. The Declarant and the Board shall have the right to grant to third parties additional utility easements which are deemed reasonable by the Declarant and the Community Association shall have the right to connect or tie into an Owner's outdoor water spigots and to use reasonable amounts of water therefrom without cost or charge for purposes of watering planted and grass areas of the Property, including the Owner's Lot. This right shall continue as to areas of the Property for a period of ninety (90) days after the planting of these areas with landscaping, seed or sod.

(b) Each Owner of any Lot, and its successors and assigns, by acceptance of a deed or other transfer documents therefore, hereby covenants and agrees to maintain and repair the

Wastewater Service Line servicing such Lot as applicable; to allow inspection by the applicable Utilities, to remove any blockage in said line, including without limitation blockage beyond clean-outs on the Lot and to remediate any environmental damage caused by breakage, blockage, or leakage thereof; and to pay or cause to be paid the service fees required under the terms of the Wastewater Agreement. No outdoor shower, downspout, sump pump or other device collecting rainwater or groundwater shall be connected to the wastewater system; any violation of this prohibition shall authorize and entitle the applicable Utilities to arrange for shut-off of potable water service to the applicable Lot.

SECTION 8.2. Community Association & Board Access.

The Community Association and its Board, officers, agents and employees, and any management company and its agents and employees, shall have the irrevocable right and easement to have access to each Dwelling and Lot as may be necessary for the inspection, maintenance, repair or replacement of any of the Community Facilities therein or accessible therefrom, or the making of any addition or improvements thereto, or to make other repairs, or fulfill any other requirements herein, to any Dwelling, Lot, and the Community Facilities, or to abate any violation of this Declaration or any rules or regulations of the Community Association or any violation of any laws or orders of any governmental authorities having jurisdiction over the Property.

SECTION 8.3. Declarant's Easement for Marketing.

For so long as Declarant owns any Lot or any portion of the Property or Project, Declarant reserves the right with respect to its marketing of Dwellings for this or other affiliated properties to use the Community Facilities without any charge or payment and, to the extent not already conveyed to purchasers, Lots or Dwellings for the ingress and egress of itself, its officers, employees, agents, contractors, subcontractors and prospective purchasers. The Declarant also reserves the right to permit prospective purchasers to park in any parking spaces located in the Community Facilities. The Declarant shall also have the right, in connection with its marketing of Dwellings, to erect signs on the Community Facilities, or on those Dwellings not already conveyed to purchasers. Any damage to the Community Facilities resulting from this easement shall be repaired by the Declarant within a reasonable time after the completion of its sale of all of the Dwellings in the Community or termination of the use of the Community Facilities, whichever shall occur first. The Declarant agrees to indemnify the Community Association from all liabilities resulting from the use of the Community Facilities in conjunction with the marketing of Dwellings. The rights reserved for the Declarant by this Section 8.3 shall remain in effect for as long as the Declarant shall remain the Owner of or have the right to create or build a Dwelling on the Property. This Section 8.3 shall not be amended without the prior written consent of the Declarant.

SECTION 8.4. Declarant's Easement for Construction.

The Declarant reserves the right with respect to the construction of Dwellings and Community Facilities to go upon any and all of the Property for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Community Facilities or Dwellings (including without limitation, to change the grade of any portion of the

Property and/or to install drainage control devices so as to control possible drainage and/or runoff of storm water in connection with the development of the Property or adjacent lands). This easement shall be appurtenant to and shall pass with title to every Dwelling. The rights hereby reserved for the Declarant shall last as long as the Declarant is the Owner of or has the right to create or build a Lot or Dwelling on the Property. This Section 8.4 shall not be amended without the prior written consent of the Declarant.

SECTION 8.5. Encroachments.

If any portion of the Community Facilities hereafter encroaches upon any Dwelling or Lot, or if any Dwelling hereafter encroaches upon any other Dwelling, Lot or upon any portion of the Community Facilities as a result of settling or shifting of any Dwelling, other than as a result of the purposeful or negligent act or omission of the Owner of the encroaching Dwelling or of the Community Association in the case of encroachments by the Community Facilities, a valid easement appurtenant to the encroaching Dwellings or Community Facilities for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist.

SECTION 8.6. Rights of the Declarant & Obligations of Owners With Respect to Utilities.

The rights and duties of the Owners of Dwellings within the Property with respect to sanitary sewer, storm sewer, water, electricity, telephone lines and facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone, gas or television lines are installed within the Property, which connections or any portion thereof lie in or upon a Lot owned by the Owner of a Dwelling served by these connections, the Declarant (as long as it owns a Lot or Dwelling in the Property) and the Community Association shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lot or Dwelling and to have the utility companies or authorities enter upon the Lot or Dwelling in or upon which the connections, or any portion thereof lie to repair, replace and generally maintain the connection as and when they may deem the same necessary. The Community Association shall be responsible for restoring the surface of the easement area to the same condition which existed prior to the use to the extent that the utility company or authority is not so responsible or has not done so.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone, gas or television lines are installed within the Property which connections serve more than one Dwelling, the other Owner of each Dwelling served by the connection shall be entitled to the full use and enjoyment of the portions of the connections as serve his Dwelling or Lot.

(c) In the event of a dispute between Owner and the Community Association with respect to repair or rebuilding of these utility connections, or with respect to the sharing of the costs thereof, upon written request of any one of these Owners, addressed to the Community

Association, the matter shall be submitted to the Board, who shall decide the dispute, and the decision of the Board shall be final, conclusive and binding on all parties.

SECTION 8.7. Continuing Easements.

Each Owner and the Declarant shall have an easement of use, access, ingress and egress to, from, over and through any private road and/or sidewalk which is located either totally or partially within an Owner's Lot.

SECTION 8.8. Easements for Municipal Officials.

Municipal officials such as fire and police personnel shall have the right to specific easements over the Property to provide the public services incident to their respective job duties during the time necessary thereto, for purposes of enforcing the applicable laws, ordinances, rules, and regulations of the said governmental bodies.

SECTION 8.9. Easements to Run With the Land.

The foregoing easements provided for in this Article VIII shall run with the land and inure to the benefit of and be binding upon the Community Association, each Owner, the Declarant, each Eligible Mortgage Holder, and each occupant or other person having any interest in any Dwelling or in the Community Facilities at the time of reference.

ARTICLE IX - ASSESSMENT OBLIGATIONS OF OWNERS

SECTION 9.1. Owners' Assessment Obligation.

(a) Aside from and in addition to Assessments provided for below each Owner of any Dwelling shall pay at settlement on his Dwelling (whether the initial sale from Declarant or at a subsequent sale by an Owner) a Five Hundred (\$500.00) Dollar payment of which one-half (1/2) shall be deposited to the repair and maintenance reserve fund, and one-half (1/2) shall be used by the Community Association for operating expenses of the Community.

(b) Each Owner shall be deemed to covenant and agree to pay to the Community Association all Assessments, including, but not limited to the following:

(i) Regular Assessments for Common Expenses to be established annually and made due and payable on a monthly basis as determined from time to time by the Board based upon the budget of the Community Association. Due to the relative benefits and costs of servicing the Carriage House Dwellings and Twin Dwellings vs. the Detached Dwellings, Detached Dwellings shall at all times be assessed for Common Expenses at a rate determined by the Board that is ten (10%) percent to twelve (12%) percent more than the rate at which Carriage House Dwellings and Twin Dwellings are assessed for Common Expenses (on a Dwelling by Dwelling basis). The Board will allocate the Common Expense liability (which excludes any liability for Limited Charges, provided for separately in (iii) below) for each type of Dwelling using the following formulas:

“X” = the monthly Assessment for Common Expenses determined by the Board to be levied upon each Carriage and Twin Dwelling

111 Total Carriage and Twin Dwellings * X = Total Carriage and Twin Assessments for Common Expenses (“Y”)

67 Total Detached Dwellings * (X*[1.1 to 1.12, as determined by the Board]) = Total Detached Assessments for Common Expenses (“Z”)

Y + Z = Total Monthly Amount of Common Expenses Assessed for the Entire Community (“TMCE”)

Y / TMCE = % of TMCE levied upon Owners of Carriage and Twin Dwellings (“Y%”)

Z / TMCE = % of TMCE levied upon Owners of Detached Dwellings (“Z%”)

Y% / 111 = the % of TMCE allocated to each Carriage Dwelling and Twin Dwelling

Z% / 67 = the % of TMCE allocated to each Detached Dwelling

By way of example, if the Board determines that Detached Dwellings shall be assessed for Common Expenses at a rate that is twelve (12%) percent more than the rate at which Carriage House Dwellings and Twin Dwellings are to be assessed, then using the above formulas the Common Expense liability of a Carriage House Dwelling would be approximately 0.537%, the Common Expense liability of a Twin Dwelling would be approximately 0.537%, and the Common Expense liability of a Detached Dwelling would be approximately 0.602%.

(ii) Special Assessments fixed, established and collected from time to time as determined by the Board for costs and expenses other than those for routine maintenance and repair. The Common Expense liability of a Dwelling for a special Assessment shall be determined in the same manner that the Common Expense liability of Dwelling for regular Assessments for Common Expenses is calculated.

(iii) Limited Charges against any one or more Dwellings to provide services which are exclusively used for such Dwellings. Each Assessment, together with interest thereon, fines, late charges and costs of collection thereof (including attorneys’ fees) as hereinafter provided shall also be the personal obligation of the Owner who was the Owner of the Dwelling at the time when the Assessment became due.

(iv) Any other charges or Assessments for what may be determined from time to time by the Community Association to be Common Expenses.

(v) Any interest charges, attorneys’ fees, penalties or fines levied by the Board for nonpayment of Assessments or for non-compliance with the terms and

provisions of this Declaration, the Bylaws or any rules or regulations created by the Board.

SECTION 9.2. Budgets.

The Board shall prepare a proposed budget of the Community Association at least sixty (60) days before the beginning of each fiscal year and set a date for a meeting of the Community Association. The Board shall cause a summary of the proposed budget, and the amount of the Assessments to be levied against each Dwelling for the following year, along with notice of the meeting of the Community Association Members 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 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 proposed budget is ratified as the budget for such fiscal year, whether or not a quorum is present at such meeting of the Community Association. 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 Community Association, then and until such time as a budget shall have been determined as provided herein, the budget in effect for such immediately preceding fiscal year shall continue for the succeeding fiscal year.

SECTION 9.3. Intentionally Omitted.

SECTION 9.4. Open Space Maintenance Contribution.

The Declarant established a fund pursuant to Chapter 40, Article 27 of the New Castle County Code for the purpose of maintaining open space and common facilities. Such maintenance fund shall be funded by a one-time assessment of Six Hundred Ninety-Eight Dollars and Eighty-Eight Cents (\$698.88), and shall be payable by the initial purchaser of each Dwelling at the earlier of settlement or occupancy of such Dwelling, and thereafter by subsequent purchasers of the Dwelling for value upon settlement of each sale and conveyance of the Dwelling. Such one-time assessments shall be levied for so long as required by New Castle County.

SECTION 9.5. Owners' Negligence.

Each Owner shall be obligated to reimburse the Community Association for any expenses incurred by it in repairing or replacing any part or parts of the Community Facilities, party walls, or any component of a Dwelling for which the Community Association has responsibility for replacement, maintenance or insurance, damaged by his act, omission or negligence or by the act, omission or negligence of his agents, guests or licensees, promptly upon receipt of the Community Association's statement therefore.

SECTION 9.6. Surplus Funds.

Any Common Surplus remaining after payment of or provision for Common Expenses and any payment of reserves may be used by the Community Association as determined by the

Board and, to the extent not used or deposited by the Board into a reserve account, may be credited to the Owners to reduce their future Assessments.

SECTION 9.7. Time of Payment.

Except as otherwise provided in this Declaration, time for payment of Assessments by an Owner shall be fixed at the discretion of the Board; provided that all regular and special Assessments shall be declared by the Board and made due and payable on an annual basis. The failure of the Board to formally declare any annual Assessment shall result in the regular annual Assessment for the immediately preceding year being the regular annual Assessment applicable to and due and payable for the current year.

SECTION 9.8. Lien for Assessments.

The regular and special Assessments for Common Expenses and Limited Charges, together with any interest thereon, fines, late charge and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien pursuant to DUCIOA § 81-316 upon the Dwelling against which each Assessment is made from the time the Assessment, fine, late charge or cost of collection become due. Each Assessment, together with interest thereon, fines, late charges and cost of collection thereof as hereinafter provided shall also be the personal obligation of the Owner of the Dwelling at the time when the Assessment becomes due.

SECTION 9.9. Late Payment of Assessments.

Any Assessment or installment thereof not paid within fifteen (15) days after the due date may bear interest from the due date at the rate of fifteen percent (15%) per annum or a higher rate permitted by law which the Board shall from time to time determine. The Board may assess fines, late charges and costs of collection (including attorneys' fees). The Board shall also have the right to charge a delinquency Assessment, as established from time to time by the Board, against any Owner whose Assessments are delinquent for a period exceeding ten (10) days from the due date. The Board shall have the right to accelerate payment of all remaining proposed payments of any regular or special Assessments for the remainder of the fiscal year.

SECTION 9.10. Method of Enforcing Collection of Assessments.

Any Assessment charged against an Owner may be enforced by a lawsuit or execution of a lien brought by the Board on behalf of the Community Association and/or the Owners in an action at law or equity against the Owner personally obligated to pay the same, or by executing the lien described herein against the Lot or Dwelling, or both, and the Board may seek whatever other remedies which are available at law or in equity. In addition to these rights and remedies available to the Community Association, the Community Association shall have the right to revoke the rights of an Owner in the Community Association to the extent permitted under DUCIOA; provided the Community Association shall provide written notice of any revocation of rights and an opportunity for the defaulting Owner to be heard before the Board. The decision of the Board shall be final. Any judgment against a Lot and its Owner shall be enforceable in the same manner as is otherwise provided by law. Attorneys' fees, court costs and collection expenses incurred by the Board incident to the collection of any Assessments or the enforcement

of any lien, together with all sums advanced and paid by the Board for taxes and payments on account of superior liens which may be required to be advanced by the Board in order to protect its lien, shall be payable by the Owner and secured by this lien.

SECTION 9.11. Unpaid Assessments at the Time of Execution Sale Against a Dwelling.

In the event that title to a Dwelling is transferred by sheriff's sale pursuant to execution upon any lien against the Dwelling, the Board may give notice in writing of any unpaid Assessments, which are a charge against the Dwelling but have not been reduced to a lien, to the sheriff and the sheriff shall pay the Assessments of which he has notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay, but prior to any distribution of the balance to the former Owner against whom the execution issued. Any unpaid Assessments which cannot be promptly collected from the former Owner may be reassessed by the Board as a Common Expense to be collected from all the Owners, including the purchaser or acquirer of title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid Assessments which are a charge against a Dwelling, the Board may, on behalf of the Owners, purchase the Dwelling at sheriff's sale; provided this action is authorized by the affirmative vote of a majority of the Board. If it does so purchase, the Board shall thereafter have the power to sell, convey, or mortgage the Dwelling to any person whatsoever.

SECTION 9.12. Voluntary Sale of a Dwelling.

Upon the voluntary sale or conveyance of a Dwelling, or any other transfer, by operation of law or otherwise, except a transfer described in Section 9.11 of this Declaration, and a transfer by Deed in lieu of foreclosure to an Eligible Mortgage Holder, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments which are charges against the Dwelling as of the date of the sale, conveyance or transfer. This joint and several liability shall be without prejudice to the right of the grantee to recover from the grantor in the amount of any unpaid Assessments which the grantee may pay, and until these Assessments are paid, they shall continue to be a charge against the Dwelling, which may be enforced in the manner set forth above; provided, however, any person who shall have entered into a written agreement to purchase a Dwelling shall be entitled to obtain a written statement from the Treasurer of the Community Association setting forth the amount of unpaid Assessments charged against the Dwelling and its Owner, and if the statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Dwelling after transfer thereof shall be liable for the payment of the amount in excess of the unpaid Assessments shown on the statement.

SECTION 9.13. Mortgage Foreclosure.

If an Eligible Mortgage Holder or other purchaser of a Dwelling acquires title to the Dwelling as a result of foreclosure of the first mortgage, or by deed in lieu of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or other charges by the Community Association pertaining to the Dwelling or chargeable to the former Owner which accrue prior to acquisition of title as a result of the

foreclosure. The unpaid share of the charges shall be a Common Expense collectible from all Owners, including the acquirer of the Dwelling by foreclosure, his successors and assigns.

SECTION 9.14. Declarant's Assessment Obligation and Assumption of Deficits.

(a) The Declarant shall not be liable for any Assessments or charges levied by the Community Association against Lots or Dwellings owned by the Declarant, except for Dwellings leased by Declarant to third party tenants.

ARTICLE X - TRANSFER OF DWELLINGS

SECTION 10.1. Transfer of Dwellings.

Any Owner may, at any time, transfer Ownership in the Lot and Dwelling (which must include such Owner's membership in the Community Association) to any other person, and it shall not be necessary to secure the prior consent of the Community Association, Board or any other Owner; provided however any such transfers shall be subject to this Declaration and the regulations regarding age of occupants as provided for in the applicable zoning regulations of New Castle County and the Fair Housing Act and its amendments as referred to above in subsection 4.1(a). Sales to be approved must comply with the Board's policies as described in 4.1, including, without limitation, the Board's right to enact rules and regulations as set forth therein.

SECTION 10.2. Leasing of Dwellings.

Any Owner shall be permitted to lease his Dwelling, provided that such lease shall (i) have an initial term of one (1) year or longer, (ii) contain provisions advising the tenant of his or her obligation to comply with all provisions of this Declaration, (iii) be approved by the Board prior to its effective date; and (iv) provide that the Community Association shall have the right, in addition to all other rights provided by DUCIOA and any other applicable laws, to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration. At least one tenant under any lease of a Dwelling must satisfy the requirements of subsection 4.1(a) hereof (regarding the age of 55 or over requirement). The Owner(s) of a leased Dwelling shall notify the Community Association in writing of the Owners' current address. The Owner(s) of a leased Dwelling shall be jointly and severally liable with his tenant(s) to the Community Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence, of the tenant(s). Every lease shall be subordinate to any lien filed by the Community Association, whether before or after such lease was entered into. In the event the Community Association fails to approve, with or without conditions, or deny a proposed lease within forty-five (45) days from the date the form of the proposed lease shall have been submitted, then approval will be deemed to have been denied.

SECTION 10.3. Mandatory Disclosure to Purchaser.

(a) Within five (5) days after the execution of an agreement for the sale of the Dwelling by the Owner, the Owner shall submit to the Community Association the names and addresses of the Purchaser. No later than sixty (60) days before settlement under said agreement

of sale, Owner shall notify the Community Association in writing of its desire for the Certificate (defined below), and the Community Association shall deliver the same within fifteen (15) days to Owner to give the same to the purchaser at least thirty (30) days before Settlement.

(b) On or before the settlement of a Dwelling, the Community Association shall furnish a certificate ("Certificate") issued by the Community Association, which Certificate shall be acknowledged by the purchaser on or before Settlement on the Dwelling and promptly returned to the Community Association, containing the following information:

(i) A statement of the then current amount of the Assessments payable annually and any unpaid Assessments currently due and payable from the selling Owner;

(ii) A statement of any other fees payable by the selling Owner;

(iii) A statement of any special Assessments currently proposed or adopted by the Community Association for the current and next two succeeding fiscal years, if these have been determined;

(iv) A statement of the amount of any reserves or any portions of those reserves designated by the Community Association for any specified project;

(v) A copy of the most recent regularly prepared balance sheet and income and expense statement of the Community Association;

(vi) A copy of the current operating budget of the Community Association;

(vii) A statement describing any insurance coverage which may be provided for the benefit of Owners;

(viii) A current copy of this Declaration, the Bylaws, all rules and regulations promulgated by the Community Association, any amendments to the foregoing and any other covenants, conditions or restrictions and related documents which may apply to the Dwelling;

(ix) Such additional information as may be required by § 81-409 of DUCIOA.

(c) A purchaser shall not be liable for any unpaid Assessments greater than those set forth in the Certificate, other than additional Assessments or other charges arising from the passage of time. The Community Association shall have the power to assess the reasonable cost of the preparation of the Certificate to the selling Owner or other requesting person and require payment thereof prior to the delivery of the Certificate to the selling Owner or other requesting person. The Community Association is not liable to any Owner or purchaser for any errors in the Certificate or for failure to comply with the foregoing requirements, except for the Community Association's intentional misconduct.

ARTICLE XI - USE AND ADDITIONAL RESTRICTIONS

SECTION 11.1. Use Restrictions.

(a) Except as used by the Declarant in connection with its construction and marketing of Dwellings, each Dwelling shall be used for residential purposes only; provided (subject to subsection (h) below) that home occupations may be carried on in the Dwelling if the use is incidental to the Dwelling's primary residential use, shall have no employees at the Dwelling, shall be in compliance with all zoning and other applicable laws, ordinances, and any rules or regulations, and shall be approved by the Board and by any municipal authorities having jurisdiction over the use. No Owner shall permit his Dwelling to be used or occupied for any prohibited purpose.

(b) No part of the Property shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of any other Dwelling or the Community Facilities. In illustration and not limitation of the foregoing, no Owner, guest or invitee shall play loud music, create excessive noise, or permit trash or clutter to accumulate on his Lot.

(c) Except for work done by the Declarant in connection with the construction and marketing of Dwellings, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Property, Community Facilities, Lots, or exteriors of Dwellings without the prior written approval of the Board.

(d) The interior of each Dwelling shall be maintained by its Owner or occupant in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any rules or regulations as may be applicable hereunder or under law. All drapes and other window treatments shall be all white or off-white on the side facing the outside of the Dwelling.

(e) No Owner or occupant of any Dwelling shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Dwelling or the Community Facilities by the Owner or occupant of any other Dwelling, or which creates or results in a hazard or nuisance on the Property.

(f) Except for a single non-illuminated address number sign to a Dwelling and except for the right reserved for the Declarant for sign(s), no sign may be erected by any Owner on or in a Lot or Dwelling (visible from the outside of the Dwelling) or on any of the Community Facilities, without the prior written approval of the Board. In no event shall any Owner or occupant display any real estate for sale sign of any kind on any Lot except in compliance with subsection (v) hereof. If permission is granted to any Owner to erect a sign, the Board reserves the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes.

(g) No Owner or occupant may obstruct the Community Facilities in any way. No Owner or occupant may store anything in or on the Community Facilities without the prior written approval of the Board.

(h) Each Dwelling shall be occupied by not more persons than the maximum permitted by law for the Dwelling.

(i) Any pet creating excessive noise, so as to disturb another Owner, whether the animal is creating a disturbance from within or outside the Dwelling; must be removed from the Property. A maximum of three (3) dogs, cats and/or other small domesticated animals may be kept by an Owner as household pets, provided that such permitted species are not kept for any commercial purposes. No non-domestic animal life may be raised, bred or kept in any Dwelling or Lot or in the Community Facilities. Non-domestic animals include, without limitation, chickens and pigs. No Owner may permit their animals to be unleashed or to defecate, without clean-up, when outside of the Owner's Dwelling. Pet owners are to take extra care to not have their pets urinate or defecate on landscaped areas. Feeding of wild animals shall be prohibited; provided, however, that small bird feeders may be permitted by rule of the Board. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets.

(j) No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept on the Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or the Board; provided these materials shall be kept in sanitary containers and in a clean and sanitary condition. These containers shall be placed for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

(k) No Owner or occupant shall erect or maintain an exterior antenna on any Lot or Dwelling. An Owner may install a small satellite dish with the prior written approval of the Board consistent with applicable federal law. Application for such approval shall in all cases include a detailed plan locating the proposed dish on the property and landscaping plan to conceal the dish from view from the remainder of the Property, and any consent by the Board will be conditioned upon installation, maintenance and replacement of such landscaping. The Board reserves the right to reject an application if the satellite dish has to be located in an area which, by the Board's sole discretion, cannot be adequately screened from other homes and the Community Facilities.

(l) Only currently registered and licensed four wheel vehicles, two wheel motorcycles and standard bicycles may be operated on driveways, streets, and other paved parking areas on the Property. No vehicles of any sort may be operated on other areas of the Property. For avoidance of any doubt, only four wheel passenger vehicles used on a regular basis by the Owner or a temporary guest may be parked outside a garage of any Dwelling. Any motorcycle, bicycle, all-terrain vehicle, golf cart, snowmobile, Commercial Vehicle (except on a day-to-day temporary basis in connection with repairs maintenance or construction work on the Property), and any recreational vehicle, mobile home, boat, trailer or similar equipment can only be parked on the Property if entirely enclosed in the garage of a Dwelling or by rule and regulation of the Board. Any maintenance, servicing, or repair of any vehicle is permitted only in a nearly enclosed garage.

(m) The Board shall have the power to remove any sign not in accord with the requirements of subsection (f) and to charge the person or persons causing the erection of same

the cost thereof. In the event that the person so responsible cannot be ascertained or the funds cannot be collected, then the Board shall be permitted to pay the same from the Community Association funds.

(n) To the extent maintenance is not specifically provided by the Community Association the Owner of each Dwelling shall maintain the Dwelling in a manner satisfactory to the Community Association and in accordance with those additional covenants, conditions or restrictions which may apply to the Dwelling. In the event that a Dwelling shall not be so maintained, the Community Association shall have the right to enter upon the Dwelling to maintain the same, after giving the Owner at least fourteen (14) days written notice to cure any maintenance problems or deficiencies, and, in this event, the Community Association shall have the right to assess the particular Owner for the cost of any maintenance and an administrative surcharge. The Community Association by its Board shall have the right to establish rules and regulations governing the exterior maintenance of any Dwelling.

(o) No tents, storage tanks, sheds, or accessory buildings or structures shall be erected or permitted to remain on the Property without the prior written approval of the Board.

(p) No outdoor clothes lines may be erected, installed or permitted to remain on any Lot.

(q) No Owner may moor or launch a boat, build a dock, fish, swim, wade, skate or other similar use in/on the ponds on the Property, if any.

(r) No tree, shrub, bush or other plant of any kind located on the Community Facilities may be cut down, trimmed, relocated, uprooted or altered in any way except by the Community Association, and no tree climbing or other hazardous activity of any kind is permitted on the Community Facilities.

(s) No swimming pools above or below ground are permitted, except for the swimming pool that is shown on the Plan as part of the Community Facilities.

(t) No building, fence (inclusive of invisible fences), wall or other structure or improvement including, but not limited to, landscaping or plantings (other than periodical plantings in plant bed(s) adjacent to Dwellings consistent with Community Association rules and regulations or guidelines) shall be commenced, erected, installed, placed or maintained upon an Owner's Lot or Dwelling, nor shall any exterior addition to or change (including change of external color scheme) or alteration or addition be made to any Dwelling which alters the external appearance of the Dwelling, the Lot or fence erected on the Lot by the Declarant, if any, prior to submitting an application for review to and receiving prior written approval by the Board. In addition, no man-made object, including, without limitation, statuary, grills, hoses, furniture, swings, bird baths and/or any objects of any other nature, may be placed on any portion of any Lot except on paved areas thereon at any time. The foregoing is in recognition of the need to keep all landscaped areas free from obstructions to facilitate the Community Association's common maintenance of all Lots.

(u) Each Owner shall submit to the Community Association, plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the Owner's

proposed changes, alterations or additions to the Lot or Dwelling. The submission shall contain proof of compliance with all applicable codes, laws and ordinances. The Community Association shall have the right to request additional information, plans and materials concerning any proposed alterations, additions and improvements. In the event the Community Association fails to approve, with or without conditions, or deny the application within forty-five (45) days from the date all plans and specifications, including all additional information, plans and materials which may be requested by the Community Association have been submitted, approval will be deemed to have been denied. The Community Association shall review the plans to determine whether they are consistent with the original design and construction of the Lots and Dwellings in the Property. The Board shall have the right to establish design criteria and standards for alterations, additions and improvements within the Property.

(v) Any Owner wishing to sell his Dwelling shall provide to the Community Association the name and telephone number of the listing agent (if any), or the Owner's telephone number if there is no listing agent. The Owner shall prepare and install on the Owner's Lot, at the Owner's expense and in a location mutually acceptable to the Owner and the Community Association, a sign in accordance with subsection (f) and the determination of the Board. The Board may, from time to time, adopt and enforce rules and regulations regarding the size, style, form and location of all such signs.

(w) No window air conditioners or window fans which project beyond the window screen shall be permitted.

(x) In accordance with § 81-320(c) of DUCIOA, any Owner shall have the right to display the flag of the United States of America, measuring up to three (3) feet by five (5) feet, on a pole attached to the exterior wall of such Owner's Dwelling.

(y) The provisions of this Article XI shall not apply to the Declarant.

ARTICLE XII – PARTY WALLS

SECTION 12.1. Party Walls.

(a) General Rules of Law to Apply. To the extent not inconsistent with the provision of this Article XII, the general rules of law regarding party walls and liability for property damage due to negligence or willful act or omissions shall apply to each party wall or party fence which is built as part of the original construction of the Carriage House Dwellings and Twin Dwellings upon the Property and any replacement thereof.

(i) In the event that any portion of any structure, as originally constructed by the Declarant, including any party wall, shall protrude over an adjoining Lot such structure, or party wall, shall not be deemed to be an encroachment upon the adjoining Lot or Lots, and Owners shall neither maintain any action for removal of a party wall or fence or projection nor any action for damages. In the event there is a protrusion as described aforesaid, it shall be deemed that the Owners and, where applicable, the Community Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or

party wall. The foregoing shall also apply to replacements of any structures, or party walls if same are constructed in conformance with the original structure, or party wall constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article XII, an Owner, who by his negligent or willful act causes the party wall to be damaged, or exposed to the elements, shall bear the whole cost of repairing the damage and/or furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article XII, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and be binding upon the parties. The costs of such arbitration shall be shared equally by the parties.

(g) Control. In case of any conflict between the terms and provisions of this Article XII and any other provisions of this Declaration, the terms and provisions of this Article XII will control.

ARTICLE XIII - COMPLIANCE AND DEFAULT

SECTION 13.1. Compliance and Default.

Each Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, the Bylaws and any rules and regulations adopted pursuant thereto, and the same as may be amended from time to time.

SECTION 13.2. Enforcement.

Failure of an Owner to comply with any provision of this Declaration or the Bylaws or any rules and regulations adopted pursuant thereto shall entitle the Community Association or

Owners to the remedies provided in this Declaration, and also to the following relief, none of which shall be exclusive of any other remedies:

(a) Suits: The Community Association or any aggrieved Owner shall be permitted to sue for the recovery of damages or for injunctive relief, or both; provided, that the Owner has exhausted his remedies provided for herein. This relief shall not be exclusive of other remedies provided by law.

(b) Costs and Attorneys' Fees: In any proceeding arising hereunder, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees; provided, however, that no costs or attorneys' fees may be recovered against the Board in any action unless the court shall first expressly find that the Board acted in bad faith.

(c) No Waiver of Rights: The failure of the Declarant, or the Board, or any Owner to enforce any covenant, restriction or other provision of this Declaration, the Bylaws or any rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

SECTION 13.3. Complaint & Hearing Procedures; Actions by Owners.

No Owner or occupant shall have the right to object, challenge, commence any suit at law or in equity or take any other action under any act, power or authority now in force or hereafter to be enacted except after following procedures established by the Board by rule or regulation consistent with the provisions of this Section 13.3. The Board, or a committee appointed by the Board, shall hear complaints from Owners or occupants of alleged violations of this Declaration (other than violations with respect to assessment obligations), the Bylaws and any rules and regulations of the Community Association. The Board, or a committee appointed by the Board, shall hold a hearing on any complaint within thirty (30) days after the receipt by the Board of a formal notice of complaint from an Owner or occupant. A decision shall be issued in writing by the Board within ten (10) days after the conclusion of the hearing. The Board shall have the right to establish various rules and procedures governing the operation and administration of the complaint and hearing process and the enforcement of the Community Association documents and rules and regulations. Unless the internal remedies provided by this Section 13.3 and any rules and regulations promulgated by the Board shall be expressly waived by the Community Association, or the Community Association fails or refuses to act, no action at law or in equity shall be commenced by any Owner or occupant until this internal remedy is pursued to exhaustion. Any action by an Owner or occupant against any other Owner or occupant arising out of any term, covenant or condition contained in the Bylaws, this Declaration or any rules and regulations adopted pursuant thereto shall be subject to the same procedures. In hearings before the Board, or a committee appointed by the Board, all parties shall be entitled to be represented by counsel.

ARTICLE XIV - INDEMNIFICATION OF OFFICERS, MEMBERS OF THE DIRECTORS
AND COMMITTEE MEMBERS

SECTION 14.1.

The Community Association shall indemnify every member of the Board, officer and committee member, his heirs, executors and administrators, against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a member of the Board, officer or a committee member of the Community Association, in accordance with and to the same extent as is permitted and as limited by the provisions of the Delaware Corporation Law (the "Corporate Law"), as amended from time to time. In the event of a settlement, indemnification shall be provided only in connection with those matters covered by the settlement as to which the Community Association is advised by independent counsel that the person to be indemnified may be indemnified under the Corporate Law. The foregoing rights shall not be exclusive of other rights to which the Director, officer or committee member may be entitled. All liability, loss, damage, costs and expenses incurred or suffered by the Community Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Community Association as Common Expenses; provided, however, that nothing contained in this Section 14.1 shall obligate the Community Association to indemnify any Member of the Community Association, who is or has been a member of the Board, an officer or a committee member with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Community Association.

ARTICLE XV - AMENDMENTS

SECTION 15.1. Amendments.

This Declaration may be amended by an instrument signed by, or the affirmative vote of, Community Association Members entitled to cast not less than sixty-seven (67%) of the total votes of all Community Association Members and shall require the prior written consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Project). Any amendment must be Recorded in the Recorder's Office.

SECTION 15.2. Changes and Modifications by Declarant.

(a) The Declarant shall have the right, for a period ending on the earlier of (i) twenty (20) years following the date of recordation of the Original Declaration, and (ii) the date on which Declarant no longer owns any Lot within the Community and Declarant has received the return from the County of all financial security provided by the Declarant to the County pursuant to the terms of that certain Land Development Improvement Agreement dated July 26, 2017, entered into by and among Whispering Woods Homes LP, Summit Land LLC, and the County, as may be amended, to modify, amend or change any of the provisions of this Declaration, as the Declarant may deem necessary or desirable, without the consent or joinder of the Community Association Members, any Mortgagee, or the Community Association, or any other party, if such amendments are:

- (i) Required by federal, state, county or local laws; or
- (ii) Required by any Mortgagee of all or any portion of the Property or Project; or
- (iii) Required by any title company issuing title insurance to Owners and/or Mortgagees of same; or
- (iv) required to correct errors or technical deficiencies or imperfections or to clarify ambiguities in this Declaration.

(b) Declarant reserves the right to waive or modify any requirement as to any individual Lot or, the Property in general necessary to avoid any hardship resulting from unintentional noncompliance with this Declaration.

ARTICLE XVI - DURATION AND TERMINATION

SECTION 16.1. Duration; Dissolution.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term not to exceed twenty-five (25) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated, at least six (6) months before the commencement of any extension, by a vote of not less than eighty percent (80%) of Owners by evidence which shall be Recorded. In the event that the Declarant is the Owner of any Lots at the time of the intended dissolution, such dissolution shall not occur without prior approval of the Declarant.

(b) Upon dissolution of the Community Association and termination of this Declaration, the real and personal property of the Community Association shall become the assets of the Owners, who are Owners at the time of the dissolution, as tenants-in-common. Provided, however, the Community Association shall not be dissolved nor shall it dispose of the Community Facilities, by sale or otherwise, without first offering to dedicate the same to the County.

ARTICLE XVII – NOTICE

SECTION 17.1. Notice of Proposed Amendment.

Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board in which a proposed amendment is considered, and shall be served upon all Members in the manner hereinafter provided for service of notices.

SECTION 17.2. Notices.

All notices required to be served upon Owners pursuant to this Declaration or the Bylaws shall be sufficient if delivered in the manner described in Article VI, Section 6.3 of the Bylaws.

SECTION 17.3. Notice to Eligible Mortgage Holders; Deemed Consent.

(a) The Community Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

(i) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot subject to a first mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.

(ii) Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a First Mortgage interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Community Association.

(iv) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.

ARTICLE XVIII - GENERAL PROVISIONS

SECTION 18.1. Maintenance Declaration; Interpretation of the Declaration and Bylaws.

(a) The provisions set forth in that certain Maintenance Declaration for Whispering Woods dated July 6, 2017, recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, as Instrument No. 20170710-0034310 (the "Maintenance Declaration"), are hereby incorporated by reference in this Declaration as if fully set forth herein. In the event of a conflict of interpretation between the provisions set forth in the Maintenance Declaration and this Declaration, the Maintenance Declaration shall govern.

(b) In the event of a conflict of interpretation between the provisions set forth in the Bylaws and this Declaration, this Declaration shall govern except to the extent this Declaration is inconsistent with applicable law. In the event that the Internal Revenue Code is hereafter amended or changed, both this Declaration and the Bylaws shall be interpreted in a manner which conforms to the provisions of the Internal Revenue Code with respect to non-profit entities, it being the intention to preserve the lawful status of the Community Association as a bona fide non-profit entity.

SECTION 18.2. Notice of Special Provisions Regarding the Property and Project.

(a) **The Property and Project are located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of the Property and Project is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.**

(b) The streets within the Project, as shown on the Plan, are dedicated to public use and are to be maintained by the State of Delaware. The sidewalk and shared-use path shall be the responsibility of the Community Association and the State of Delaware will assume no responsibility for the future maintenance of the sidewalk and/or shared-use path.

(c) The Property contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware.

SECTION 18.3. Waiver of Claims as to Mold.

Declarant has not represented, warranted or guaranteed that the Lots, Dwellings, Community Facilities or any portion of the Community are free from mold, fungi, or other naturally occurring biological agents or pollutants (collectively "Mold") or that Mold will not develop in the Lots, Dwellings, Community Facilities or any portion of the Community in the future. Mold is a part of the natural environment and may grow indoors in moist conditions. According to the United States Environmental Protection Agency ("EPA") it is impossible to get rid of all mold and mold spores indoors but certain steps may be useful in reducing the occurrence of mold growth. (EPA Document 402-K-01-001). Based upon this information, certain maintenance, repair and replacement responsibilities have been established in this Declaration and the Bylaws to be performed by the Community Association, under the direction of the Board, and the Owners with regard to addressing water penetration, water leaks, moisture problems and humidity, all of which conditions provide opportunity for Mold growth. Failure to perform such responsibilities shall be at the Owners' sole risk and the Owners shall be solely responsible for any property damages, personal injury damages, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects or consequential damages of any kind caused as a result thereof.

SECTION 18.4. General.

If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof, the Bylaws or any rules and regulations. All of these provisions remaining in effect shall continue as if the invalid provisions had not been included herein unless the provisions declared invalid or deleted from this document shall frustrate the intent of the contract in which case only those provisions necessary to effectuate the intent of the contract shall remain effective. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration. This Declaration shall become effective when it has been duly Recorded. This Declaration shall inure to the benefit of and shall be binding upon the Declarant, their successors and assigns.

SECTION 18.5. Construction.

Number and gender, as used in this Declaration, shall extend to and include both singular and plural and genders as the context and construction require.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Community Association has caused this Declaration to be certified, executed and its seal affixed hereto as of the day and year first written above.

COMMUNITY ASSOCIATION:

Whispering Woods Community Association


Witness

By:  (SEAL)
Name: David Pearsall
Title: President

THE UNDERSIGNED HEREBY consents to the foregoing Declaration:

DECLARANT:

Whispering Woods Homes LLC

By: Admiralty Holdings, LLC,
its managing member

Witness

By: _____ (SEAL)
Name: Kevin E. McLaughlin
Title: Vice President and Assistant Secretary

IN WITNESS WHEREOF, the Community Association has caused this Declaration to be certified, executed and its seal affixed hereto as of the day and year first written above.

COMMUNITY ASSOCIATION:

Whispering Woods Community Association

Witness

By: _____ (SEAL)
Name: David Pearsall
Title: President

THE UNDERSIGNED HEREBY consents to the foregoing Declaration:

DECLARANT:

Whispering Woods Homes LLC

By: Admiralty Holdings, LLC,
its managing member



Witness

By:  (SEAL)
Name: Kevin E. McLaughlin
Title: Vice President and Assistant Secretary

STATE OF Delaware

:

COUNTY OF New Castle

SS.

:

On this the 7th day of July, 2023, before me, a Notary Public for the State and County aforesaid, personally appeared David Pearsall, President of Whispering Woods Community Association, and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

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

SHIRLEY N. BURKHOLDER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires 01-06-2025

Shirley N. Burkholder
NOTARY PUBLIC

PRINT NAME: Shirley N. Burkholder

COMMISSION EXPIRES: 01-06-2025

COMMONWEALTH OF PENNSYLVANIA

:

SS.

COUNTY OF DELAWARE

:

On this the ____ day of _____, 2023, before me, a Notary Public for the Commonwealth and County aforesaid, personally appeared Kevin E. McLaughlin, Vice President and Assistant Secretary of Admiralty Holdings, LLC, a Pennsylvania limited liability company, as managing member of Whispering Woods Homes LLC, a Delaware limited liability company, and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

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

NOTARY PUBLIC

PRINT NAME:

COMMISSION EXPIRES:

STATE OF _____ :
COUNTY OF _____ :
SS.

On this the _____ day of _____, 2023, before me, a Notary Public for the State and County aforesaid, personally appeared David Pearsall, President of Whispering Woods Community Association, and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

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

NOTARY PUBLIC
PRINT NAME:
COMMISSION EXPIRES:

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF DELAWARE :
SS.

On this the 18th day of July, 2023, before me, a Notary Public for the Commonwealth and County aforesaid, personally appeared Kevin E. McLaughlin, Vice President and Assistant Secretary of Admiralty Holdings, LLC, a Pennsylvania limited liability company, as managing member of Whispering Woods Homes LLC, a Delaware limited liability company, and in due form of law acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

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

Christina M. Sica
NOTARY PUBLIC
PRINT NAME: Christina M. Sica
COMMISSION EXPIRES: 11/9/23

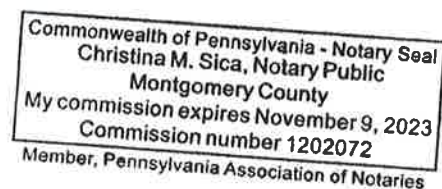


EXHIBIT "A"

PROPERTY

ALL that certain farm or tract of land situate in St. Georges Hundred, New Castle County, Delaware and being more particularly bounded and described in accordance with a survey made by Morris & Ritchie Associates, Inc. on the 28th day of April, A.D. 2016, as follows, to wit:.

BEGINNING for the same at a point in the south right-of-way line of the State Highway leading from McDonough to Mount Pleasant, being shown on the State of Delaware State Highway Department Construction Plan for Contract Number 66-01-008, being Road 15 as shown thereon and also known as Boyds Corner Road, said point being the beginning of the first or South eight degrees and fifty-two minutes East, twenty nine hundred fifty-seven foot line of that tract of land conveyed by and described in a deed dated September 9, 1964 from Frances M. North, Widow to James D. Deeney and Mary E. Deeney, his wife, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Record Book Q-73, Page 536, said point also being at the intersection of the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road and the first or south ten degrees East one hundred and eighty-two and eight-tenths perch line of Parcel No. 1 of those tracts or parcels of land conveyed by and described in a deed dated April 6, 2006 from Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Frank Rausch, Jr., Settlor, as amended, and Louise R. Carpenter, Successor Trustee under a Revocable Trust Agreement dated March 20, 1991, with Margaret A. Rausch, Settler, as amended, to Rausch Enterprises, L.L.C., a Delaware limited liability company, and recorded in the said Office of the Recorder of Deeds as Record Number 20060411-0034295, thence leaving the said right-of-way line of Road 15 – Boyds Corner Road and binding of the said first line of the first mentioned conveyance to Deeney, and the remainder of the first line of the second mentioned conveyance to Rausch Enterprises, L.L.C., as now surveyed, with all bearings herein being referred to the Delaware State Plane Coordinate System (NAD'83/COORS11)

1. South 18° 02' 43" East 2958.09 feet to a point at the end of the sixth or South 83° 58' 44" West, 1009.62 foot line of Parcel No. 3 of all those certain lots, pieces or parcels of land conveyed by and described in a deed dated December 22, 1975 from Bronislaw Koper, Widower to Delmarva Power and Light Company, a corporation of the State of Delaware, and recorded in the aforesaid Office of the Recorder of Deeds in Record Book S-91, Page 330, thence binding on the second line of the aforesaid conveyance to Deeney and reversely on the said sixth line of the last mentioned conveyance to Delmarva Power and Light Company,
2. North 83° 58' 20" East 1009.63 feet, thence binding reversely on the fifth, fourth and third lines of Parcel No. 3 of said conveyance to Delmarva Power and Light Company, which lines are said to be the division lines of said Delmarva Power and Light Company and the lands of Deeney, three courses, viz:
3. South 15° 28' 21" West 363.00 feet,

4. South 53° 28' 21" West 264.00 feet, and
5. South 13° 01' 39" East 515.54 feet to a ½" iron pipe heretofore set, said pipe being at the end of the seventh or North 86° 46' 42" East 2147.61 foot line of Parcel No. 2 of the last mentioned conveyance to Delmarva Light and Power Company, thence binding reversely thereon, which line is said to be the division line between the land of the Delmarva Light and Power Company and the land of Deeney,
6. South 86° 46' 22" West 2147.85 feet to a concrete monument heretofore set with a brass disk marked DP&L-PLS135, and to intersect the eighteenth or North four degrees East twenty-four hundred seventy foot line of the first mentioned conveyance herein to Deeney, thence binding on the remainder of said eighteenth and all of the nineteenth lines of said conveyance to Deeney, two courses, viz:
7. North 18° 24' 01" West 1154.81 feet to a 2" iron pipe heretofore set, and
8. North 00° 18' 35" West 802.07 feet to a stone heretofore planted, said stone being at the end of the fourth or South 89 degrees 48 minutes 19 seconds West 555.37 foot line of a Confirmatory/Corrective Deed amending the legal description dated October 28, 1993 and recorded in the aforesaid Office of Recorder of Deeds in Record Book 1627 Page 0234, thence binding reversely on said fourth, the third, second and first lines of said conveyance, four courses, viz:
9. North 81° 54' 58" East 555.42 feet to a ½" iron pipe heretofore set,
10. North 10° 14' 06" West 1028.05 feet to a ½" iron pipe heretofore set
11. North 79° 27' 32" East 100.00 feet to a ½" iron pipe heretofore set, and
12. North 12° 03' 36" West 873.39 feet, to a point on the aforesaid southerly right-of-way line of Road 15 – Boyds Corner Road, distant South 12° 03' 36" East 0.14 feet from a ½" iron pipe heretofore set, thence binding on the said right-of-way, two courses, viz:
13. By a non-tangent curve to the right with a radius of 5699.58 feet and an arc length of 58.85 feet, said curve being subtended by a chord bearing South 87° 36' 27" East 58.85 feet, to a point of tangency, and
14. South 87° 18' 42" East 444.31 feet to the place of beginning.

CONTAINING 114.529 acres of land, more or less.

BEING all of the land shown on the Plan entitled "Whispering Woods, Record Major Subdivision Plan," and recorded in the said Office of the Recorder of Deeds as Microfilm No. 20170830-0044757.

New Castle County Tax Parcel Numbers

Parcel #	Address	Lot #
1301222079	1480 WHISPERING WOODS RD	PRIOPSP
1301222051	341 TRANQUILITY WAY	PRIOPSP
1301222070	1401 WHISPERING WOODS RD	PRIOPSP
1301224018	401 CONTEMPLATION WAY	PRIOPSP
1301222038	363 TRANQUILITY WAY	PRIOPSP
1301222025	317 TRANQUILITY WAY	PRIOPSP
1300744009	1315 WHISPERING WOODS RD	PRIOPSP
1300744008	1314 WHISPERING WOODS RD	1
1300744008	113 SERENITY CIR	1
1300744007	1308 WHISPERING WOODS RD	2
1300744007	103 SERENITY CIR	2
1300744010	102 SERENITY CIR	3
1300744011	104 SERENITY CIR	4
1300744012	106 SERENITY CIR	5
1300744013	108 SERENITY CIR	6
1300744005	110 SERENITY CIR	7
1300744006	112 SERENITY CIR	8
1301222001	114 SERENITY CIR	9
1301222002	116 SERENITY CIR	10
1301222002	1322 WHISPERING WOODS RD	10
1301222006	1326 WHISPERING WOODS RD	11
1301222006	302 TRANQUILITY WAY	11
1301222005	304 TRANQUILITY WAY	12
1301222004	306 TRANQUILITY WAY	13
1301222003	308 TRANQUILITY WAY	14
1301222007	314 TRANQUILITY WAY	15
1301222008	316 TRANQUILITY WAY	16
1301222009	318 TRANQUILITY WAY	17
1301222010	320 TRANQUILITY WAY	18
1301222011	322 TRANQUILITY WAY	19
1301222012	324 TRANQUILITY WAY	20
1301222013	326 TRANQUILITY WAY	21
1301222014	328 TRANQUILITY WAY	22
1301222015	330 TRANQUILITY WAY	23
1301222016	332 TRANQUILITY WAY	24
1301222017	334 TRANQUILITY WAY	25
1301222018	336 TRANQUILITY WAY	26

1301222019	338 TRANQUILITY WAY	27
1301222020	340 TRANQUILITY WAY	28
1301222021	342 TRANQUILITY WAY	29
1301222022	344 TRANQUILITY WAY	30
1301222023	346 TRANQUILITY WAY	31
1301222024	348 TRANQUILITY WAY	32
1301222071	352 TRANQUILITY WAY	33
1301222072	354 TRANQUILITY WAY	34
1301222073	356 TRANQUILITY WAY	35
1301222074	358 TRANQUILITY WAY	36
1301222075	362 TRANQUILITY WAY	37
1301222076	364 TRANQUILITY WAY	38
1301222077	366 TRANQUILITY WAY	39
1301222078	368 TRANQUILITY WAY	40
1301222050	1432 WHISPERING WOODS RD	41
1301222049	1430 WHISPERING WOODS RD	42
1301222048	1428 WHISPERING WOODS RD	43
1301222047	1426 WHISPERING WOODS RD	44
1301222046	1424 WHISPERING WOODS RD	45
1301222045	1422 WHISPERING WOODS RD	46
1301222044	1420 WHISPERING WOODS RD	47
1301222043	1418 WHISPERING WOODS RD	48
1301222042	1416 WHISPERING WOODS RD	49
1301222041	1414 WHISPERING WOODS RD	50
1301222040	1412 WHISPERING WOODS RD	51
1301222039	1410 WHISPERING WOODS RD	52
1301222029	303 TRANQUILITY WAY	53
1301222028	305 TRANQUILITY WAY	54
1301222027	307 TRANQUILITY WAY	55
1301222026	309 TRANQUILITY WAY	56
1301222030	323 TRANQUILITY WAY	57
1301222031	325 TRANQUILITY WAY	58
1301222032	327 TRANQUILITY WAY	59
1301222033	329 TRANQUILITY WAY	60
1301222034	331 TRANQUILITY WAY	61
1301222035	333 TRANQUILITY WAY	62
1301222036	335 TRANQUILITY WAY	63
1301222037	337 TRANQUILITY WAY	64
1301222052	349 TRANQUILITY WAY	65
1301222053	353 TRANQUILITY WAY	66

1301222054	355 TRANQUILITY WAY	67
1301222055	1403 WHISPERING WOODS RD	68
1301222056	1405 WHISPERING WOODS RD	69
1301222057	1407 WHISPERING WOODS RD	70
1301222058	1409 WHISPERING WOODS RD	71
1301222059	1411 WHISPERING WOODS RD	72
1301222060	1413 WHISPERING WOODS RD	73
1301222061	1415 WHISPERING WOODS RD	74
1301222062	1417 WHISPERING WOODS RD	75
1301222063	1419 WHISPERING WOODS RD	76
1301222064	1421 WHISPERING WOODS RD	77
1301222065	1423 WHISPERING WOODS RD	78
1301222066	1425 WHISPERING WOODS RD	79
1301222067	1427 WHISPERING WOODS RD	80
1301222068	1429 WHISPERING WOODS RD	81
1301222069	1431 WHISPERING WOODS RD	82
1301222087	1441 WHISPERING WOODS RD	83
1301222088	1443 WHISPERING WOODS RD	84
1301222089	1445 WHISPERING WOODS RD	85
1301222090	1447 WHISPERING WOODS RD	86
1301222091	1451 WHISPERING WOODS RD	87
1301222092	1453 WHISPERING WOODS RD	88
1301222093	1455 WHISPERING WOODS RD	89
1301222094	1457 WHISPERING WOODS RD	90
1301222095	1459 WHISPERING WOODS RD	91
1301222096	1461 WHISPERING WOODS RD	92
1301222097	1463 WHISPERING WOODS RD	93
1301222098	1465 WHISPERING WOODS RD	94
1301222099	1467 WHISPERING WOODS RD	95
1301222100	1469 WHISPERING WOODS RD	96
1301222101	1471 WHISPERING WOODS RD	97
1301222102	1475 WHISPERING WOODS RD	98
1301222103	1477 WHISPERING WOODS RD	99
1301222104	1479 WHISPERING WOODS RD	100
1301222105	1481 WHISPERING WOODS RD	101
1301222106	1483 WHISPERING WOODS RD	102
1301222107	1485 WHISPERING WOODS RD	103
1301222108	1489 WHISPERING WOODS RD	104
1301222109	1491 WHISPERING WOODS RD	105
1301222110	1493 WHISPERING WOODS RD	106

1301222111	1495 WHISPERING WOODS RD	107
1301222112	1497 WHISPERING WOODS RD	108
1301222113	1499 WHISPERING WOODS RD	109
1301224042	566 CONTEMPLATION WAY	110
1301224043	564 CONTEMPLATION WAY	111
1301224044	562 CONTEMPLATION WAY	112
1301224045	560 CONTEMPLATION WAY	113
1301224046	558 CONTEMPLATION WAY	114
1301224047	556 CONTEMPLATION WAY	115
1301224048	554 CONTEMPLATION WAY	116
1301224049	548 CONTEMPLATION WAY	117
1301224050	544 CONTEMPLATION WAY	118
1301224051	540 CONTEMPLATION WAY	119
1301224052	534 CONTEMPLATION WAY	120
1301224053	530 CONTEMPLATION WAY	121
1301224054	526 CONTEMPLATION WAY	122
1301224055	522 CONTEMPLATION WAY	123
1301224041	517 CONTEMPLATION WAY	124
1301224040	525 CONTEMPLATION WAY	125
1301224039	529 CONTEMPLATION WAY	126
1301224038	531 CONTEMPLATION WAY	127
1301224037	535 CONTEMPLATION WAY	128
1301224036	537 CONTEMPLATION WAY	129
1301224035	541 CONTEMPLATION WAY	130
1301224034	545 CONTEMPLATION WAY	131
1301224033	549 CONTEMPLATION WAY	132
1301224032	553 CONTEMPLATION WAY	133
1301224031	557 CONTEMPLATION WAY	134
1301224030	561 CONTEMPLATION WAY	135
1301224019	415 CONTEMPLATION WAY	136
1301224020	419 CONTEMPLATION WAY	137
1301224021	423 CONTEMPLATION WAY	138
1301224022	427 CONTEMPLATION WAY	139
1301224023	431 CONTEMPLATION WAY	140
1301224024	435 CONTEMPLATION WAY	141
1301224025	441 CONTEMPLATION WAY	142
1301224026	445 CONTEMPLATION WAY	143
1301224027	449 CONTEMPLATION WAY	144
1301224028	453 CONTEMPLATION WAY	145
1301224029	509 CONTEMPLATION WAY	146

1301224063	514 CONTEMPLATION WAY	147
1301224062	512 CONTEMPLATION WAY	148
1301224061	510 CONTEMPLATION WAY	149
1301224060	508 CONTEMPLATION WAY	150
1301224059	506 CONTEMPLATION WAY	151
1301224058	502 CONTEMPLATION WAY	152
1301224058	803 REFLECTION CT	152
1301224057	807 REFLECTION CT	153
1301224056	811 REFLECTION CT	154
1301224017	818 REFLECTION CT	155
1301224016	816 REFLECTION CT	156
1301224015	450 CONTEMPLATION WAY	157
1301224015	804 REFLECTION CT	157
1301224014	446 CONTEMPLATION WAY	158
1301224013	436 CONTEMPLATION WAY	159
1301224012	432 CONTEMPLATION WAY	160
1301224011	428 CONTEMPLATION WAY	161
1301224010	424 CONTEMPLATION WAY	162
1301224010	601 DAYDREAM CT	162
1301224009	605 DAYDREAM CT	163
1301224008	607 DAYDREAM CT	164
1301224005	608 DAYDREAM CT	165
1301224006	606 DAYDREAM CT	166
1301224007	416 CONTEMPLATION WAY	167
1301224007	602 DAYDREAM CT	167
1301224004	414 CONTEMPLATION WAY	168
1301224003	410 CONTEMPLATION WAY	169
1301224002	406 CONTEMPLATION WAY	170
1301224001	1498 WHISPERING WOODS RD	171
1301224001	402 CONTEMPLATION WAY	171
1301222086	1494 WHISPERING WOODS RD	172
1301222085	1492 WHISPERING WOODS RD	173
1301222084	1490 WHISPERING WOODS RD	174
1301222083	1488 WHISPERING WOODS RD	175
1301222082	1486 WHISPERING WOODS RD	176
1301222081	1484 WHISPERING WOODS RD	177
1301222080	1482 WHISPERING WOODS RD	178

EXHIBIT “B”

WHISPERING WOODS COMMUNITY ASSOCIATION

COMPONENT AND RESPONSIBILITY CHART

Ownership Key:

- CA = Owned by the Community Association, to which all Owners are Members. Includes the Community Facilities.
- O = Owned by one or more Owners. Includes a Dwelling and a Lot upon which the Dwelling is constructed. There are three types of Dwellings – Detached Dwellings, Carriage House Dwellings, and Twin Dwellings.
- P = Owned by a public utility company or governmental authority, entity or agency.

Assessment Key:

- CE = Common Expense - fees charged to cover the Community Association costs which are shared equally by all Owners.
- LC = Limited Charge - direct charges to Owners for Community Association costs which are excluded from the budget (and monthly Assessments for Common Expenses), charged only to the one or more Owners (i.e., less than all Owners) who derive the benefit when the service is provided by the Community Association.

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>COMM. ASSN. RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Roofing Flashing	O	Repair Replacement	LC LC	Payment of LC
Skylights	O	None		Cleaning Repair Replacement ⁽²⁾
Gutters Downspouts	O	Cleaning Repair Maintenance Replacement	LC LC LC LC	Payment of LC
Chimney V-Channels and Fireplaces	O	None		Cleaning Repair Maintenance
Windows, Window glass, Sliding glass doors, Patio doors, Screened-in Porches, Sunrooms	O	None		Cleaning Repair Replacement ⁽²⁾
Front entrance door Hinged patio door	O	Repainting	LC	Cleaning Replacement ⁽²⁾ Repair Payment of LC
Locks, hinges, or other hardware on windows and doors	O	None		Repair Replacement
Garage door	O	Repainting (long term)	LC	Replacement ⁽²⁾ Repair Payment of LC

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>COMM. ASSN. RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Garage door lock, hardware, Mechanisms	O	None		Maintenance Repair Replacement
Exterior or synthetic trim and entrance porch columns	O	Repainting Repair Replacement	LC LC LC	Cleaning Payment of LC
Exterior entrance lighting, controlled from inside the home	O	None		Electricity Cleaning Repair Replacement ⁽²⁾
Any other significant home exterior component not listed above including siding, brick, soffits, fascia, or shutters	O	Repair Replacement	LC LC	Cleaning Payment of LC
Front Porch, entranceway, landing, stoop	O	Snow clearing Replacement	CE LC	Cleaning Ice melting Payment of CE/LC
Patio or Deck	O	Maintenance Replacement	LC LC	Cleaning Snow clearing Ice melting Payment of LC
Sewer and water laterals from the clean out or curb stop to the home	O	None		Operation Repair Maintenance Replacement
Sanitary sewer and water lines on the street side of the clean out or curb stop	P	None	N/A	None

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>COMM. ASSN. RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Sidewalks to individual homes	O	Snow clearing ⁽¹⁾ Repair Replacement	CE LC LC	Cleaning Ice melting Payment of CE/LC
Driveways and driveway aprons	O	Snow clearing ⁽¹⁾ Repair Resealing Resurfacing	CE LC LC LC	Cleaning Ice melting Payment of CE/LC
Original planted beds adjacent to Dwellings	O	Maintenance	CE	Watering Planting Payment of CE
Original landscape (turf, trees, shrubs, bushes) on the Lots	O	Maintenance Limited Replacement	CE CE	Watering near home Payment of CE
Landscape (turf, trees, shrubs, bushes) <u>not</u> on Lots but in Community Facilities	CA	Maintenance Limited Replacement	CE CE	Payment of CE
Planted islands in public street	CA or P	Watering Maintenance Replacement	CE CE CE	Payment of CE
Streets	P	None		None
Curbing along Community Facilities (concrete)	CA	Repair Replacement	CE CE	None Payment of CE

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>COMM. ASSN. RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Curbing along Lots (concrete)	O	Repair Replacement	CE CE	Payment of CE
Street lights	P	None		None
Common sidewalks located along public street	CA	Snow clearing ⁽¹⁾ Maintenance Replacement	CE CE CE	Payment of CE
Entrance Area Signage, entrance monuments, and other entrance features including a small sprinkler irrigation system (if any)	CA	Operation Water Maintenance Replacement	CE CE CE CE	Payment of CE
Clubhouse	CA	Operation Utilities Repair Maintenance Replacement	CE CE CE CE CE	Payment of CE
Pool, pool area and related storage building	CA	Operation Repair Maintenance Replacement	CE CE CE CE	Payment of CE
Bocce facilities, Horseshoe courts, Walking trail	CA	Repair Maintenance Replacement	CE CE CE	Payment of CE
Clubhouse parking spaces	CA	Snow clearing Repair Resealing Resurfacing	CE CE CE CE	Payment of CE

<u>COMPONENT</u>	<u>OWNERSHIP</u>	<u>COMM. ASSN. RESPONSIBILITY</u>	<u>CHARGED AS</u>	<u>OWNER RESPONSIBILITY</u>
Stormwater Management Areas, Basins and Ponds (if any), Storm Piping and inlets (to the extent not dedicated to the public)	CA	Operation Maintenance Repair Replacement	CE CE CE CE	Payment of CE
Stormwater Management Areas, Basins and Ponds (if any), Storm Piping and inlets (to the extent dedicated to the public)	P	None		None

- (1) Snow will be cleared per the service guidelines of the Board and only where there are vehicles parked in such a way that the area can be cleared when contractor is present to do the work.
- (2) Replacement is subject to the Whispering Woods architectural review guidelines.



Department of Land Use

December 6, 2023

In reply, refer to:

2023-0413-MD

Maintenance Declaration Amendment for Whispering Woods Subdivision

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

David Carter, New Castle County Councilman
800 French Street, City/County Building
Wilmington, DE 19801

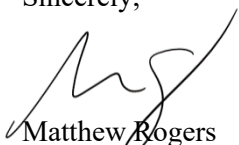
Dear Ms. Hill and Councilman Carter:

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. The Whispering Woods Community Association (formerly known as the Whispering Woods Maintenance Corporation) has been working with David J. Martin, Esq. to amend the Maintenance Declaration for the Whispering Woods Development, dated July 10, 2017.

The Department received a request from David J. Martin on behalf of The Whispering Woods Community Association to amend the maintenance declaration to define the Whispering Woods Community Association as being the solely organized for the maintenance of private open spaces, stormwater management facilities, as well as to expand the powers and purpose of the association to include operation, maintenance, repair, and replacement of Community Facilities as well as certain components of residential lots and the exteriors of dwellings and to be consistent with 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 Whispering Woods 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.
Charuni Patibanda, General Manager
Antoni Sekowski, Assistant General Manager
Janet Vinc, Planning Manager
David J. Martin, Esq.

Introduced by: Mr. Tackett, Ms. Kilpatrick
Date of introduction: June 13, 2023

ORDINANCE NO. 23-084

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 25 (“DESIGN”) REGARDING HAMLET AND VILLAGE DESIGN AND LOCATION

WHEREAS, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as Amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan 2050” or “Comprehensive Plan”), on July 26, 2022, and the County Executive approved the Ordinance on August 4, 2022; and

WHEREAS, the Comprehensive Plan includes the 2022 Future Land Use Map and existing and planned sewer service area maps that are intended to direct future development; and

WHEREAS, the 2022 Future Land Use Map identifies properties that are appropriate for future development as hamlets or villages; and

WHEREAS, the County recognizes the importance of updating its development regulations to implement the New Castle County Comprehensive Plan 2050; and

WHEREAS, Ordinance 09-037 introduced Smart Code development options to the County south of the C&D Canal with the intent to eventually expand to select land in northern New Castle County which would benefit from this type of development; and

WHEREAS, the New Castle County Comprehensive Plan guides development and redevelopment to be sensitive to the context of neighboring residential development; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 25 (“Design”), Division 40.25.100 (“Hamlet and Village Design”), Section 40.25.121 (“Instructions”) is hereby amended by deleting the material that is bracketed and stricken, and adding the material that is underscored, as set forth below.

DIVISION 40.25.100 HAMLET AND VILLAGE DESIGN

Sec. 40.25.121. Instructions

A. The use of this Division . . .

B. Projects proposed in this Division must be zoned Suburban (S) and ~~[be located south of the C&D canal, west of US 13, east of the Norfolk and Southern Railroad spur and generally north of Marl Pit Road]~~ be served or planned to be served by public sewer in the Comprehensive Development Plan.

C. Section 40.25.120 plans ~~[shall]~~ must include . . .

D. The developer ~~[shall]~~ must make a . . .

E. Any other density bonus established . . .

F. Prior to Section 40.25.120 plan approval . . .

Section 2. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 3. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the County Council’s intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable

and shall be considered as continuations thereof as not as new enactments regardless if severability is possible.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 Del. C § 1156 and shall only apply to Land Use applications submitted after such date(s) unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Sec. 40.25.121. This amendment requires Hamlet and Village developments on Suburban zoned land planned to be sewerred.

FISCAL NOTE: There is no discernible fiscal impact with the adoption of this ordinance.



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance 23-084
Application 2023-0326-T
Hamlets and Villages**

November 28, 2023

Sponsor: Councilman Tackett (District 11), Councilwoman Kilpatrick (District 3)

Description: Amendment to amend New Castle County Code Chapter 40 (The "Unified Development Code"), Article 25 ("Design") regarding Hamlet and Village Design and Location

EXECUTIVE SUMMARY

Application 2023-0326-T (Ord. 23-084) is a proposed text amendment to the Design article (Article 25) of the Unified Development Code that seeks to amend the minimum criteria for Hamlet and Village developments, allowing for them to occur in other areas of the County. Today, Hamlet and Village developments are only permitted to occur in a limited portion of southern New Castle County. Ord. 23-084 proposes to allow Hamlet and Village developments on Suburban (S) zoned parcels that are at least fifty contiguous acres and served by public sewer.

Hamlet and Village developments promote smart-growth development through of Smart Code¹ principles, a transect-based approach that incorporates multimodal transportation, mixed land uses, walkable neighborhoods, and preservation of open space while providing a variety of housing options that are non-monotonous in design. As New Castle County grows and development continues to occur, community design and the built environment will be even more important as a vital factor in the health, welfare, and happiness of the County's residents. The 2022 New Castle County Comprehensive Plan supports the expansion of Hamlets and Villages and even goes as far as to establish a Future Land Use category for these types of developments.

The County is committed to promoting the health, safety, and welfare of its residents through smart-growth planning, community design, and an enhanced land development process; Ord. 23-084 seeks to achieve these goals. In reviewing the Standards for Text Amendment included in Section 40.31.420, the Department of Land Use recommends **APPROVAL** of App. 2023-0326-T / Ord. 23-084.

DESCRIPTION

¹ <https://transect.org/index.html>

Ord. 23-084 proposes to amend the Hamlet and Village provisions that currently limit Hamlet and Village developments to Suburban (S) zoned parcels located south of the C&D Canal, west of US 13, east of the Norfolk and Southern Railroad spur, and generally north of Marl Pit Road. Instead, Ord 23-084 proposes that Hamlet and Village developments can occur in any area of the County that meet the following criteria:

- Within the Suburban (S) zoning district
- Fifty (50) contiguous acres in size
- Must be served by or planned to be served by public sewer (as identified in the Comprehensive Development Plan)

BACKGROUND

Article 25 (“Design”) of the UDC is utilized as tool in New Castle County’s land development process that seeks to establish longevity in community character through the establishment of developments that include a diversity of uses, scale, and building design over modern developments that tend to be mass-produced and monotonous in nature. Originally adopted in 2009, the Hamlet and Village provisions were added to the Unified Development Code after the County identified the core principle of smart growth development as lacking in the development regulations provided in the UDC. The Hamlet and Village provisions utilize Smart Code principles that were originally established in response to mid to late 20th-century development, where Euclidean zoning regulations typically separated residential development from schools, shopping centers, employment areas. Pulling from the principles of New Urbanism, Smart Code and other form-based code’s focus on the physical form of a development rather than specific land uses, the Hamlet and Village provisions were limited to the central core of the Southern New Castle County sewer service area. The provisions, existing today, limit Hamlet and Village development to lands zoned Suburban (S) that are located south of the C&D Canal, west of US 13, east of the Norfolk and Southern Railroad spur, and generally north of Marl Pit Road. These were among the first areas that were slated to receive sewer infrastructure as part of the C&D Canal at the time when the Hamlet and Village provision were originally adopted, .

Currently, the only Hamlet and Village style plan under development is the Village of Whitehall; however, the Department does have other land development applications on file proposing this style development. For this reason, the Department has been able to measure the success, effectiveness, and even the challenges of the Hamlet and Village provisions since their adoption. While the overall vision of the Whitehall development has reduced in overall scope, the Village of Whitehall has proven to be a success as an attractive and desirable place to live, work, and play. Based on this success, the latest Comprehensive Plan update (2022) identified Hamlet and Village style development to be appropriate in other areas of the County and encourages enhanced design for the benefit of its residents.

As noted in the 2022 Comprehensive Plan, the County is expected to have significant demographic shifts as the County’s population ages and residents continue to migrate to New Castle County. Currently, New Castle County has a lack in diversity of housing types that the Village and Hamlets addresses. During the Comprehensive Plan update, the Department held several public workshops and meetings where it received feedback from the community regarding the importance of community design and the built environment. Following community input, the County identified the expansion of the Hamlet and Village provisions to other areas of the County as a strategy to provide for better community and development

design. A new category of the Future Land Use map was also established as part of the Comprehensive Plan update for Hamlet and Village developments.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The proposed text amendment was reviewed at a PLUS meeting held on July 26, 2023. The PLUS Review Letter dated August 23, 2023, includes comments from the Office of State Planning and Coordination (OSPC), who notes that the ordinance provides greater flexibility in siting Hamlets and Villages that was consistent with the goals of the 2022 New Castle County Comprehensive Plan. The Delaware State Housing Authority noted their support for the ordinance, as Hamlets and Villages allow for smart growth principles, density, and walkability.

PLANNING BOARD PUBLIC HEARING – November 7, 2023

**Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use.*

Janet Vinc, Planning Manager at the Department of Land Use, presented the proposed ordinance. Ms. Vinc provided a brief summary of Ord. 23-084, which stemmed out of the most recent Comprehensive Plan update in 2022. She noted that the ordinance proposes to allow for Hamlet and Village development options in other areas of the County beyond southern New Castle County, on parcels that are 50 contiguous acres in size, accessible to sewer, and within the Suburban zoning district.

Robin Lester spoke in favor of the application. Ms. Lester stated that her family has resided in St. Georges Hundred for generations and continue to own property in that area of the County. She stated that when the County went through the most recent Comprehensive Plan update, her family attended the multiple public meetings and engaged in multiple discussions. She stated that after participating in the process with diligence, she encouraged the Planning Board to support the proposed ordinance.

Fred Wittig spoke in favor of the application and noted his support for the ordinance.

Robert Wittig spoke in favor of the application and stated his support for the ordinance. He noted his participation in the recent Comprehensive Plan update process and noted that he was a proponent for the Village and Hamlet provisions. He stated that he believed the County had done significant work and that the ordinance reflected as such.

Mike DeNote, representative of the Lester Family, spoke in favor of the applications. Mr. DeNote stated that the Lester Family owns land that will largely be impacted by the adoption of the ordinance and will allow them to pursue a Hamlet and Village style development, in concurrence with the Comprehensive Plan. He noted that the ordinance before the Board is consistent with the Future Land Use component of the Comprehensive Plan, which was vetted through years of public meetings and forums prior to its adoption at County Council. He noted the success of the Comprehensive Plan and noted that the Delaware State Housing Authority supported the proposed ordinance in their PLUS review.

Sean Stevenson spoke in favor of the application. He stated that he supported the ordinance.

Andy Oldenderski, member of the MOT Alliance, spoke in opposition of the ordinance, noting concerns regarding lack of supporting infrastructure as it relates to transportation in Southern New Castle County.

He stated that residents in the new developments will increase traffic to get to places such as grocery stores, causing additional traffic concerns.

Councilman David Carter offered general comments on the ordinance. He stated that while he believed the Hamlet and Village provisions to have potential, he believed it should be further evaluated as to where these developments are appropriate. He stated that there is not a strong understanding of the commercial industry and the impacts COVID-19 had on the landscape. Councilman Carter noted his concerns regarding developer commitments to ensure the full vision of a Hamlet and Village development is carried out. He noted the importance of infrastructure as it relates to transportation.

Charlie Weymouth spoke in opposition of the ordinance, noting that he found the concept commendable but that the ordinance was lacking. He concurred with the comments made by Councilman Carter and expressed concern regarding support for infrastructure and schools.

A member from the public offered general comment noting her concerns regarding increased development and how it will impact schools, which already are struggling to maintain bus drivers and teachers.

ANALYSIS

As a result of mid to late twentieth century zoning practices and development across the country, there has historically been an adverse effect on unique community character. The establishment of Smart Code in reaction to these patterns has resulted in newer and better designed developments that foster a healthy and attractive built environment. As seen through the latest Comprehensive Plan update, residents of New Castle County have identified community design to be one of the highest priorities to consider as New Castle County continues to grow. Specifically, the Hamlet and Village provisions allow for enhanced community design and long-range planning that will benefit community character and the developed landscape. As such, the Department recognizes that the Hamlet and Village development option is appropriate in other areas of the County, particularly in already densely populated areas.

Pulling from the principles of form-based codes, the existing Hamlet and Village provisions provide for a comprehensive look at proposed developments in regard to transportation / traffic, housing, built infrastructure, and a mix of uses. It should be noted that Hamlet and Village developments are not precluded from providing the infrastructure required by both the Unified Development Code and State Code. This includes being serviced by County sewer, connected to public water, meeting all the traffic requirements included in Article 11 of the UDC, meeting all school concurrency requirements, and paying impact fees that support county services such as fire and public safety. If permitted in other appropriate areas of the County where residential development is already plausible under the Unified Development Code, developers will have an additional opportunity to establish well-designed and attractive developments that compliment local, surrounding community character.

Standards for Text Amendment – Section 40.31.420 of the New Castle County Code

Pursuant to Section 40.31.420 of the New Castle County Code, in determining whether a text amendment shall be recommended or approved, all the following factors shall be considered:

A. *Implementation of a new portion of the Comprehensive Development Plan.*

The 2022 Comprehensive Plan update established a new Future Land Use category for Hamlet and Villages development in order to establish designated areas that are proposed for long-range planning efforts, described below:

“These are areas that, based on existing developments, land use analysis as well as community planning efforts have been determined to be appropriate for development in a manner consistent with the Hamlet and Village provisions of the Unified Development Code. All land development plans within those designated areas shall be consistent with the Hamlet and Village provisions at the time of submission. Developments using the Hamlet and Village provisions subsequent to the adoption of the 2022 New Castle County Comprehensive Development Plan, will be updated on the Future Land Use Map at the 5-year review opportunity or the formal update in 2032.”

Adoption of Ord. 23-084 aligns with the implementation of the new Future Land Use Category for Hamlets and Villages.

B. Implementation and achievement of the Comprehensive Plan’s goals and objectives.

The 2022 Comprehensive Plan identifies community design as a goal, with Hamlet and Village development as a key strategy to accomplishing this goal. Adoption of Ord. 23-084 would be in concert with the implementation of the Comprehensive Plan’s identified goals and objectives.

C. Consistency with the provisions of this Chapter and the standards for similar uses.

By permitting Hamlet and Village developments in areas that are both zoned Suburban (S) and serviced by sewer, the proposed provisions are consistent with existing development standards included in the Unified Development Code.

D. Necessity to respond to State and/or Federal legislation.

N/A

E. Flexibility in meeting the objectives of this Chapter.

Ordinance 23-084 provides additional flexibility in the Unified Development Code by expanding development options and the permitted areas for Hamlets and Villages beyond the central core of Southern New Castle County.

F. Changes to conditions, interpretations, and/or clarifications to existing language for new uses.

N/A

G. Consideration of specific problems found in this Chapter.

N/A

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Standards for Text Amendment in Section 40.31.420 of the New Castle County Code, the comments received from outside agencies, and the comments received by the public.

Based on this analysis, the Department is of the opinion that the standards are met by this proposal and recommends **APPROVAL** of App. 2023-0326-T / Ord. 23-084.

PLANNING BOARD RECOMMENDATION

At a business meeting held on November 28, 2023, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Mr. Snowden and seconded by Ms. Gray, the Board voted to recommend **APPROVAL** of the proposed ordinance.

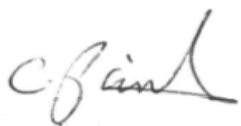
The motion was adopted by a vote of 8-0-0-0 (In Favor: Peterson, Daigle, Gray, Visvardis, Snowden, Cochran, Cahill-Krout, Drake; In Opposition: None; Abstention: None; Absent None:).

Prior to the vote the following discussion occurred:

Ms. Peterson noted that the Board had received comments regarding the application, opining that the proposed ordinance was premature and that based on the development of Whitehall, has not achieved the original goals of the Hamlet and Village provision. Mr. Rogers noted that Whitehall at its inception was a development option; however, the Future Land Use Map has since established a Future Land Use category for Hamlets and Villages, which would require that developments meet the provisions. Mr. Sekowski stated that despite the evolution of the Village of Whitehall and Traditions of Whitehall, the Department would consider the development a success. Ms. Patibanda noted that during the last public hearing, the Board heard several comments and public testimony from the residents noting how much they enjoy Whitehall and the amenities it provides. Ms. Visvardis added that success of projects doesn't happen overnight and almost never on the first attempt. Ms. Patibanda stated that mixed use types of communities are very popular and heard feedback from the public that it is a very attractive type of development.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would promote the convenience, order, and welfare of the present and future inhabitants of this state.



12/18/2023

Charuni Patibanda
General Manager
Department of Land Use

date



12/18/2023

Karen Peterson
Chair
Planning Board

date

Prime Sponsor(s): Mr. Carter, Ms. Durham
Co-Sponsor(s): Mr. Toole, Mr. Cartier
Date of introduction: July 11, 2023

ORDINANCE NO. 23-095

**AMENDING NEW CASTLE COUNTY CODE CHAPTER 40
(THE "UNIFIED DEVELOPMENT CODE")
TO ESTABLISH A PROTECTED
OPEN SPACE ZONING DISTRICT**

1 **WHEREAS**, in 1997, New Castle County Council enacted a comprehensive overhaul
2 of New Castle County's original 1954 zoning and subdivision regulations with the addition
3 of Chapter 40 to the *New Castle County Code* (the "Unified Development Code" or "UDC");
4 and

5
6 **WHEREAS**, the Unified Development Code has since undergone considerable
7 evolution to better reflect growth trends in the County and to advance the UDC regulations
8 to include planning and land use ideas and values to meet today's needs; and

9
10 **WHEREAS**, the County's urban growth patterns have created a void in the ability of
11 County government and its citizens to clearly recognize and appreciate the significant
12 amounts of public and private open space that exist today in the County; and

13
14 **WHEREAS**, the zoning of open space protected in perpetuity in categories describing
15 other uses is confusing to the public and leads to a practical misunderstanding of the future
16 growth patterns of the County, rather than clearly depicting the real world current and future
17 land use conditions; and

18
19 **WHEREAS**, it is important to establish an Open Space (OS) District to readily show
20 the extent of publicly protected lands and provide a clearer vision of the size and extent of
21 these important land uses; and

22
23 **WHEREAS**, Strategy 1.1.6 of the 2022 New Castle County Comprehensive Plan states
24 that the County should consider the addition of a preservation zoning category, and defines
25 "Protected Open Space" as privately or publicly held land that has been protected from future
26 development, yet such parcels are not readily designated differently from other parcels which
27 are able to be further developed; and

28
29 **WHEREAS**, the establishment of the Open Space District, which will include all
30 Federal, State, County, and other local government lands protected in perpetuity through
31 donation or the use of public funds and placed under protective covenants or conservation
32 easements will provide a clearer picture of the extent of permanent open space and
33 recreational land use in the County, and their protected class; and

34
35 **WHEREAS**, County Council has determined that the provisions of this Ordinance
36 substantially advance, and are reasonably and rationally related to, legitimate government
37 interests, including the protection and preservation of the public health, safety, prosperity,
38 general welfare, and quality of life.

39 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
40

41 Section 1. *New Castle County Code* Chapter 40 (the “Unified Development Code”),
42 Article 2 (“Establishment of Zoning Districts”), Division 40.02.200 (“Statement of purpose
43 and intent of districts”) is hereby amended by the addition of the underscored text as set
44 forth below.
45

46 **Division 40.02.200. Statement of purpose and intent of districts.**
47

48 This Division specifies the purpose and intent of the zoning districts established by
49 this Chapter. The major community character classes (urban, suburban transition,
50 suburban, [and] special, and protected open space) are used to organize the districts. Uses
51 within a community character class are more similar in character than uses in a different
52 class. All districts share the purpose of implementing the Comprehensive Development
53 Plan.
54

55 It is County Council's intent to encourage agricultural preservation in all New Castle
56 County zoning districts. ...
57

58 Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article
59 2 (“Establishment of Zoning Districts”), Division 40.02.200 (“Statement of purpose and intent
60 of districts”) is hereby amended by the underscored language as set forth below:
61

62 **Sec. 40.02.248. Protected Open Space (OS) District.**
63

64 The Protected Open Space (OS) District is comprised of land that is protected in perpetuity
65 through the purchase of protective covenants utilizing public funds or the donation of protective
66 covenants to a public entity including public parks, an ecological habitat or any other
67 environmental or outdoor recreation area.
68

- 69
- 70 A. Land designated as OS includes federal, state, county, and other local government
71 lands that have been permanently protected from land development.
72
- 73 B. Land designated as OS additionally includes private lands protected in perpetuity
74 through donation of fee simple property or conservation easements, covenants, or deed
75 restrictions, or through the purchase of protections utilizing public funds where the
76 federal, state, county, or other local government has obtained ownership or is a named
77 beneficiary in conservation easements or other protective covenants, with the exception
78 that it does not include land protected under the Delaware Agricultural Lands
79 Preservation Program.
80
- 81 C. The Department of Land Use must advise New Castle County Council, biyearly of any
82 land not already zoned OS that meets the above criteria. County Council will introduce
83 an ordinance, consistent with the provisions of this Chapter, to rezone all land meeting
84 the above criteria to OS.

Section 3. New Castle County Code Chapter 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use regulations”), Section 40.03.110 (“Use table”) is hereby amended by adding the material that is underscored and by deleting the material with strikethroughs, as set forth below:

Sec. 40.03.110. Use table.

Table 40.03.110 lists the type of uses permitted in each district. Refer to Division 40.33.200 for definitions of the various use categories and their components...

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE										Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)										Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I		CN	*** S	SE	** NC	HI	EX	SR	QS			Parking	Limited & Special Use Standards
Agricultural										Agricultural										Agricultural	
Agriculture (includes uses pursuant to Delaware Law)	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y			na.	---
Clearing	L	L	L	L	L	L	L	L		L	L	L	L	L	L	L	L			na.	Section 40.03.301
Farmstead	N	N	N	N	N	N	N	N		N	Y	Y	N	N	N	Y	Y			2.0/du.	---
Farm market	L	L	L	L	L	L	L	L		L	L	L	L	L	L	L	L			8 spaces	Section 40.03.328
Commercial stables	N	N	N	N	N	N	N	N		N	L	L	N	N	N	L	L			1 per 2 stalls	Section 40.03.302
Residential										Residential										Residential	
Single-family, detached	Y	Y	N	N	N	N	N	N		N	Y	Y	Y	N	N	Y	N			2.0/du.	---
Open space subdivision, option 1	N	N	N	N	N	N	N	N		N	Y	Y	N	N	N	Y	N			3.0/du.	---
Open space subdivision, option 2	N	N	N	N	N	N	N	N		N	Y	N	N	N	N	N	N			2.0/du.	---
Single-family, attached	Y	Y	N	N	N	N	N	N		N	N	N	Y	N	N	N	N			2.25/du.	---
Open space planned	Y	Y	N	N	N	N	N	N		N	Y	N	N	N	N	N	N			2.25/du.	---
Apartments	Y	Y	N	N	N	N	N	N		N	N	N	L	N	N	N	N			Table 40.03.522	Section 40.03.303
Apartment conversions	L	L	N	N	N	N	N	N		N	L	N	L	N	N	N	N			2.0/du.	Section 40.03.304
Commercial apartments	L	N	N	N	N	L	N	N		L	N	N	N	N	N	N	N			2.0/du.	Section 40.03.305
Hamlet	N	N	N	N	N	N	N	N		N	L	N	N	N	N	N	N			Division 40.25.100	Division 40.25.100
Village	N	N	N	N	N	N	N	N		N	L	N	N	N	N	N	N			Division 40.25.100	Division 40.25.100
Group home	Y	Y	N	N	N	N	N	N		N	Y	Y	Y	N	N	Y	N			1.0/2 beds	---
Manufactured home park	N	N	L	N	N	N	N	N		N	N	N	L	N	N	N	N			2.25/du.	Section 40.03.306
Small single-family	L	L	N	N	N	L	N	N		L	L	N	L	N	N	N	N			[2.0/du.]	[---]
Home Uses										Home Uses										Home Uses	
Day care, family/large family	A	A	A	N	N	N	N	N		N	A	A	A	N	N	A	N			Section 40.03.420	Section 40.03.420
Home occupation	A	A	A	N	N	A	N	N		A	A	A	A	N	N	A	N			Table 40.03.522	Section 40.03.420
Home business	N	N	N	N	N	N	N	N		N	L	L	N	N	N	L	N			Table 40.03.522	Table 40.03.210, Article 25 for design standards
Cottage industry	N	N	N	N	N	N	N	N		N	L	L	N	N	N	L	N			Table 40.03.522	Table 40.03.210, Article 25 for design standards
Institutional										Institutional										Institutional	

Table 40.03.110 A GENERAL USE TABLE									Table 40.03.110 B GENERAL USE TABLE									Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,									Zoning District (Suburban and Special Character)									Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	OS	Parking	Limited & Special Use Standards	
Assembly and worship	L	L	N	N	L	Y	L	L	L	L	L	L	N	N	L	N	Table 40.03.522	Section 40.03.307, Division 40.25.200	
Schools	L	L	N	N	L	Y	L	L	L	L	L	L	N	N	L	N	Table 40.03.522	Section 40.03.307	
Colleges	Y	Y	N	L	Y	Y	Y	Y	L	N	N	N	N	N	N	N	Table 40.03.522	Section 40.03.307	
Institutional, regional	N	L	N	N	L	L	L	L	N	L	L	L	N	N	L	N	Table 40.03.522	Section 40.03.308	
Institutional, neighborhood	L	L	L	L	L	L	L	L	L	L	L	L	N	N	L	N	Table 40.03.522	Section 40.03.309	
Institutional, residential (Type I)	L	L	N	N	N	Y	N	N	L	L	L	L	N	N	Y	N	Table 40.03.522	Table 40.03.210	
Institutional, residential (Type II)	L	L	N	N	N	L	N	N	L	L	L	L	N	N	L	N	Table 40.03.522	Table 40.03.210	
Protective care	N	N	N	N	S	N	S	S	N	N	N	N	S	N	S	N	Table 40.03.522	Table 40.03.210, Section 40.03.310	
Public service	L	L	L	Y	Y	Y	Y	Y	Y	L	L	L	Y	Y	L	N	Table 40.03.522	Section 40.03.311	
Hospitals	N	N	N	N	Y	Y	Y	Y	N	N	N	L	N	N	N	N	1/bed	Table 40.03.210	
Commercial									Commercial									Commercial	
Adaptive reuse, historic building	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	Table 40.03.522	Section 40.15.240	
Adult uses	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	1/100 GFA	Section 40.03.313	
Agricultural support and other rural services	N	N	N	N	Y	Y	Y	Y	Y	S	S	S	Y	Y	S	N	Table 40.03.522	Section 40.03.314 and Section 40.03.336	
Bed and breakfast	L	L	N	N	N	N	N	N	L	L	L	L	N	N	L	N	1 / room plus 2 / du	Section 40.03.315	
Commercial lodging	N	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210	
Commercial retail and service	L	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Division 40.25.200	
Corporate guest house	N	L	N	N	Y	Y	Y	Y	N	L	L	L	N	N	L	N	Table 40.03.522	Table 40.03.210	
Craft alcohol production establishment	N	N	N	N	N	L	L	L	L	L	L	N	N	N	L	N	Table 40.03.522	Table 40.03.210, Section 40.03.318, Section 40.03.338	
Drive-in facility	L	N	N	L	L	L	L	L	L	N	N	N	L	N	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.316	
Heavy retail and service	N	N	N	N	N	Y	N	Y	N	N	N	N	S	N	N	N	Table 40.03.522	Section 40.31.430	
Light automobile service	L	N	N	N	L	Y	L	Y	Y	N	N	N	N	N	N	N	Table 40.03.522	Section 40.03.317	
Mixed use	L	N	N	L	L	L	N	N	L	N	N	N	N	N	N	N	Table 40.03.522	Section 40.03.318, Division 40.25.200	
Restaurants	L	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Division 40.25.200	
Office	L	N	N	Y	Y	Y	Y	Y	Y	N	N	N	L	N	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.321, Division 40.25.200	
Shopping center	N	N	N	N	N	Y	N	N	Y	N	N	N	N	N	N	N	Table 40.03.522	---	
Vehicular sales, rental and service	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	Table 40.03.522	---	
Recreation and Amusement									Recreation and Amusement									Recreation and Amusement	
Campground	N	N	N	N	N	N	N	N	N	L	N	N	N	N	L	L	1/space + 3/50 spaces at office	Table 40.03.210	

Table 40.03.110 A GENERAL USE TABLE									Table 40.03.110 B GENERAL USE TABLE								Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,									Zoning District (Suburban and Special Character)								Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	OS	Parking	Limited & Special Use Standards
Recreation, high intensity	N	N	N	N	S	Y	S	S	L	N	N	N	N	L	N	<u>N</u>	Table 40.03.522	Table 40.03.210. In EX, see also Section 40.03.324
Recreation, low intensity	L	L	L	L	L	Y	L	L	Y	L	L	L	L	N	L	<u>L</u>	Table 40.03.522	Table 40.03.210
Resort	N	N	N	N	N	L	N	N	N	L	L	N	N	N	L	<u>N</u>	Table 40.03.522	Table 40.03.210, Section 40.03.322
Industrial Uses									Industrial Uses								Industrial Uses	
Compost operations	N	N	N	N	N	N	N	L	N	N	N	N	L	L	S	<u>N</u>	Table 40.03.522	Section 40.03.336
Extraction	N	N	N	N	N	N	N	N	N	N	N	N	N	L	N	<u>N</u>	Table 40.03.522	Section 40.03.324 and Table 40.03.210
Heavy industry	N	N	N	N	N	N	N	N	N	N	N	N	S	N	N	<u>N</u>	Table 40.03.522	---
Light industry	N	N	N	N	L	S	Y	Y	N	N	N	N	Y	Y	N	<u>N</u>	Table 40.03.522	Section 40.03.333
Recycling or storage	N	N	N	N	L	N	L	L	N	N	N	N	L	N	N	<u>N</u>	Table 40.03.522	Table 40.03.210
Utilities, maintenance facilities	N	N	N	N	Y	L	Y	Y	N	N	N	N	Y	N	N	<u>N</u>	Table 40.03.522	Section 40.03.312
Utility, minor	L	L	L	L	L	L	L	L	L	L	L	L	Y	Y	L	<u>N</u>	Table 40.03.522	Section 40.03.334
Utility, major	S	S	S	S	S	S	S	L	S	S	S	S	L	S	S	<u>N</u>	Table 40.03.522	Section 40.03.312
Solar energy system, large-scale	N	N	L	L	L	L	L	L	N	L	N	N	L	N	L	<u>N</u>	na.	Section 40.03.337
Other Uses									Other Uses								Other Uses	
Airports	N	N	N	N	L	N	L	L	N	S	N	N	L	N	S	<u>N</u>	Special study, Section 40.03.524	Table 40.03.210, Section 40.03.325 and 40.03.432
Commercial communications towers	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	<u>L</u>	2 per tower	Section 40.03.326
Community recycling bins	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	<u>A</u>	---	Section 40.03.430
Exterior lighting for outdoor recreational uses	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	<u>S</u>	Table 40.03.522	Table 40.03.210 and Division 40.22.700
Park and ride facility	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	<u>N</u>	---	Table 40.03.210
Parking structures	N	N	N	S	S	S	S	S	S	S	N	N	S	N	N	<u>N</u>	---	Sections 40.03.528, 40.01.320, and 40.25.137
Temporary Uses									Temporary Uses								Temporary Uses	
Temporary storage, office or classroom modulars or trailers	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	<u>N</u>	Table 40.03.522	Table 40.03.210
Concrete/asphalt batch plant	N	N	N	N	N	N	N	L	N	N	N	N	L	L	L	<u>N</u>	Table 40.03.522	Section 40.03.327
Contractor's office	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	<u>N</u>	1/200 sf.	---
Model homes/sale office	L	L	L	N	N	N	N	N	N	L	L	L	N	N	L	<u>N</u>	2/model	Section 40.03.335
Commercial temporary outdoor sales	L	N	N	N	N	L	N	N	L	N	N	N	N	N	N	<u>N</u>	None	Section 40.03.329
Public interest and special events	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	<u>L</u>	Table 40.03.522	Section 40.03.330
Temporary miscellaneous sales	L	N	N	N	N	L	N	N	L	N	N	N	N	N	N	<u>N</u>	Table 40.03.522	Table 40.03.210, Section 40.03.331
NOTES: * Refer to Article 25 for design standards for TN District. ** Refer to Section 40.02.241 for identification of permitted residential uses by specific NC zoning district. *** See Division 40.25.100 for Village and Hamlet Standards.																		

Section 4. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 4 (“District Intensity and Bulk Standards”), Division 40.04.100 (“District performance standards”), Section 40.04.110 (“District and bulk standards”) is hereby amended by adding the material that is underscored and by deleting the material with strikethroughs as set forth below:

Sec. 40.04.110. District and bulk standards.

Table 40.04.110 A. DISTRICT AND BULK STANDARDS								Table 40.04.110 B. DISTRICT AND BULK STANDARDS								Table 40.04.110 C. DISTRICT AND BULK STANDARDS	
District Standards								Lot, and Building Standards								Storage and Comments	
Zoning District & Development Type	Min. OSR / LSR	Density		Floor Area Ratio		Utilities (on-site, public)	Min. Site Area	Minimum							Maximum	Exterior Storage	Notes
		Max. Gross	Max Net	Max. Gross	Max Net			Lot Area	Lot Width (feet)	Street Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Paving street yard/other yard (feet)	Unit Mix (%)	Building Height (feet)	Percent of Lot Area	
Protected Open Space (OS)								Protected Open Space (OS)								Protected Open Space (OS)	
Permitted uses*	0.70	na.	na.	0.12	0.45	OS/P	na.	na.	na.	50	40	50	50/30	na.	40	na.	*Standards are applicable unless explicitly established by a Governmental agreement. ...

Section 5. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 4 (“District Intensity and Bulk Standards”), Division 40.04.100 (“District performance standards”), Section 40.04.111 (“Landscape and illumination standards”), Table 40.04.111 (“Use and Lot Standards”) is hereby amended by adding the material underscored and by deleting of the material with strikethroughs as set forth below:

Sec. 40.04.111. Landscape and illumination standards.

Bufferyard, landscaping standards and lighting standards are provided in Table 40.04.111.

Table 40.04.111 A. USE AND LOT STANDARDS							Table 40.04.111 B. USE AND LOT STANDARDS																	Table 40.04.111 C. USE AND LOT STANDARDS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
Zoning District & Development Type	Landscaping Plant Units per (See Division 40.23.100)			Bufferyard Opacity Standards			Bufferyard Opacity Standards (See Section 40.23.140)														Street Tree Spacing (feet)	Max. Illumination/Height		Notes																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
				Adjoining Streets			Adjoining District or Use (1) (No bufferyard shall be required where like zoning district and like developments options are adjacent)															Illumination	Height																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
	Lot	Acre Open Space	Parking Spaces				Arterial	Collector	Minor	SR	SE NC 2a	S	NC 40-10	ST	TN	MM	NC 6.5 or less*	ON	OR	CN					CR	BP	I	HI	EX																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				

Section 6. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 6 (“Sign Regulations”), Division 40.06.000 (“Applicability”) is hereby amended by the deletion of the material with strikethroughs and the addition of the underscored material as set forth below:

Division 40.06.000. Applicability.

A. With regard to Section 40.06.060 Schedule of Sign Restrictions, the following rules shall govern:

1. Protected Open Space (OS), Neighborhood Conservation (NC), Suburban Reserve (SR), Suburban Estate (SE), Suburban (S), Suburban Transition (ST), and Traditional Neighborhood (TN) districts shall all be considered residential districts.
2. Commercial Neighborhood (CN)...

Section 7. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 8. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C. § 1156*.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County Council

Approved on:

Mathew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance proposes the creation of a new zoning district known as the Protected Open Space (OS) District. The OS zoning district will designate public interest open space that has been protected in perpetuity. The Ordinance sets forth the purposes of the Protected Open Space (OS) District, and establishes the permitted by right and prohibited uses as well as limited and accessory uses within the district.

FISCAL NOTE: There is no discernible fiscal impact.



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance 23-095
Application 2023-0385-T
Protected Open Space**

November 28, 2023

Sponsor: Councilman David Carter (District 6), Councilwoman Dee Durham (District 2), Councilman Toole (District 1), Councilman Cartier (District 8)

Description: Amendment to amend New Castle County Code Chapter 40 (The "Unified Development Code") to establish a Protected Open Space Zoning District.

EXECUTIVE SUMMARY

Application 2023-0385-T (Ordinance 23-095), is a text amendment to the Unified Development Code (UDC) that proposes to establish a new zoning district, Protected Open Space (OS). The Protected Open Space (OS) zoning designation would be required for properties that are publicly protected and identified as protected in perpetuity for the public benefit. According to the synopsis of the ordinance, the district is an effort to provide a clearer picture of permanently protected open space in New Castle County. As written, the proposed Protected Open Space (OS) District would only apply to lands that are protected in perpetuity through; the use of protective covenants that utilize public funds, were donated to a public entity including parks, ecological habitats, and environmental / outdoor recreation areas. The ordinance neither addresses lands preserved through the State of Delaware Agricultural Lands Program, nor does it apply to lands that are protected through private easements and/or covenants.

Absent an Open Space zoning district, open space, along with its natural, agricultural, cultural, and historic resources have been protected and preserved through various public and private means in the county. The Department believes that the establishment of a Protected Open Space District will not have a material impact on open space preservation but would serve to re-affirm the existing protections on publicly protected and designated Open Space lands in New Castle County, memorializing them on the Zoning Map. If adopted, Ord. 23-095 would require a comprehensive rezoning of all parcels eligible for Open Space pursuant to the parameters included in the ordinance. It will also require additional comprehensive rezonings every two years to account for increases in publicly held open space in the county.

Based on the standards in Section 40.31.420, the Department of Land Use recommends **APPROVAL** of Ordinance 23-095.

DESCRIPTION

App. 2023-0395-T (Ord. 23-095) proposes to amend Chapter 40 (UDC) of New Castle County Code in order to establish a Protected Open Space (OS) zoning designation. Lands eligible for the proposed OS zoning designation include those that are protected in perpetuity through protective covenants that utilize public funds or that were donated to a public entity.

BACKGROUND

New Castle County actively preserves and protects our valuable natural and agricultural resources as open space, while providing quality recreational areas such as Glasgow Park. While land is actively preserved through public and private conservation easements and covenants, some of the most impactful preservation of land has been accomplished through the creation of community area open space as required by the residential development process. This process requires the preservation of environmentally sensitive land, provides ample land for active recreation purposes, and creates buffering.¹

There are many ways that County, municipal, state, and federal governments have preserved land as open space in New Castle County. The Department of Public Works maintains and has expanded County owned open space to just under 7,000 acres. Since 1996, the State Department of Agriculture has partnered with the County to preserve more than 14,000 acres of farmland. Municipal, state, and federal governments have preserved more than 33,000 additional acres of land through a variety programs. Private voluntary preservation of land through deed restrictions, protective covenants, and conservation easements, have separately preserved more than 10,000 acres of land.

Preservation and equitable access to open space and recreational areas are central components of the 2022 Comprehensive Plan Update (NCC2050).² The plan clearly identifies open space areas for County residents through a series of maps:

- Map D-1: Protected Lands (page 105);
- Map D-10: Agricultural Land (page 120);
- Map E-1: Parks and Open Space (page 136); and
- Map E-2 Parks and Trails (page 137).

New Castle County provides access to these maps and other important open space and preservation information through a publicly available map application.³

¹ Regulatory efforts have historically been most successful through Cluster Developments in the Former Code (Pre-UDC, before December 31, 1997) and in Open Space Subdivisions (UDC cluster type developments).

² NCC2050, Priority Policy: Land Preservation, pages 47-51; Element E: Open Space and Recreation Element, pages 133-146.

³ Public map application: <http://gis.nccde.org/>.

In February of 2023, the Planning Board had considered Ord. 22-112, which proposed the establishment of an Open Space district in the Unified Development Code. The ordinance received a negative recommendation from the Department of Land Use and the Planning Board due to a number of concerns including the proposed language that focused on privately protected lands and the required rezoning of parcels on what would typically be minor land use applications. In following months, the sponsors worked with the Department of Land Use to address concerns and a new ordinance, Ord. 23-095, was introduced.

Ordinance 23-095 was introduced on July 11, 2023 by the sponsors. Addressing the concerns raised by the Department and the Planning Board, Ord. 23-095 focuses on the protection of publicly protected lands through donation to public or the use of public funds. The sponsors have also expressed their desire for an Open Space zoning district in order for there to be better clarity on what lands are protected from development.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The proposed text amendment was reviewed at a PLUS meeting held on August 23, 2023. The PLUS Review Letter, dated September 21, 2023, includes comments from the Office of State Planning and Coordination, who notes that the 2022 New Castle County Comprehensive Plan includes strategies for the protection of Open Space. DelDOT, DNREC, DEMA, SHPO and DE State Fire Marshal noted that they did not have any comments or objection to approval of the proposed ordinance.

PLANNING BOARD PUBLIC HEARING – November 7, 2023

**Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use.*

Councilwoman Dee Durham, the ordinance's sponsor, spoke on behalf of the application. She provided a brief background of the proposed ordinance and how it differed to the previous Open Space ordinance that was considered by the Board earlier in the year. She noted after working with the Department of Land Use in the spring, Ord. 23-095 was drafted. Councilwoman Durham stated that the Ord. 23-095 only applies to land that have been protected through public means and would not apply to privately held easements and protections. She noted that Ord. 23-095 does not include parcels preserved through the Delaware Farmland preservation or privately held open space that is set aside as parts of developments. She stated that the goals of the Open Space district is to provide further clarity in the zoning code as to uses appropriate within preserved open space areas, as well as to provide a clear picture of publicly protected lands. Councilwoman Durham stated that the New Castle County Open Space Advisory Board recommended approval of the proposed ordinance. Councilwoman Durham spoke to different maps of the County based on the Delaware State Strategies and New Castle County's mapping layers. She stated that she did not believe parks should have a base residential zoning that would permit development. She provided examples of different protected lands layers on the County's GIS and noted that she had been working with the Department of Land Use regarding the GIS maps available at the County to ensure accuracy.

Ms. Peterson inquired about the Open Space Advisory Committee's letter and asked if the Board could get a copy of the letter. Councilwoman Durham noted she would send in a copy. Ms. Peterson inquired about the proposed provision which references the State of DE Agland Program are not included in the ordinance. Councilwoman Durham noted that the program functions differently than other publicly

protected lands and do permit a certain amount of development. Councilwoman Durham noted that the County should take a deeper look at the program and how it would function in concert with the ordinance. Ms. Peterson and Councilwoman Durham discussed the definition of perpetuity and how long it lasts. Ms. Peterson inquired about the bi-yearly update. Councilwoman Durham noted that bi-yearly means every two years.

Ms. Peterson noted for the record that the Board had received a significant amount of emails.

Leslie Brower, resident of Whitehall, spoke in favor of the proposed ordinance. She noted her appreciation of the effort and transparency of open space. She inquired about the district and bulk standards and the maximum building height of 40ft. and what the ordinance contemplates about structures with a maximum height of 40ft.

Sherri Evans Stanton, Chair of the New Castle County Open Space Advisory Board, spoke in favor of the proposed ordinance. She read into the record the Open Space Advisory Board's letter, which notes their support due to the benefit to citizens of the County.⁴ Ms. Stanton noted that the ordinance achieves the goals the Comprehensive Plan. She noted that there is considerable overlap on open space between land use and the Public Works Department and encouraged that there be coordination between Public Works and Land Use in regard to preservation of open space.

Cheryl Siskin, a representative of the Delaware Sierra Club, spoke in favor of the ordinance. She noted that the ordinance provides clarity to the public regarding dedicated open space. She stated that the maps available are confusing and that the proposed ordinance helps clarify open space.

Anna Quisel, League of Women Voters, spoke in favor of the ordinance. She stated that she agreed that there should be a clear picture of Open Space that is protected in perpetuity. She noted that the ordinance complies with the most recent Comprehensive Plan and expressed thanks to the ordinance's sponsors for their effort.

ANALYSIS

Approximately 27% of the land area in New Castle County is protected as open space through public and private programs, as well as through land development regulations included in the UDC. Specifically, areas that are impacted by environmental resources receive 100% protection through Article 10 (Environmental Resources) in the UDC. Ord. 23-095 seeks to establish a new zoning category in the Unified Development Code that applies to lands that have been protected in perpetuity through the use of public means, such as covenants or donations. Therefore, the proposed district would reaffirm protected status of designated areas through zoning. As proposed, Open Space zoning district includes district and bulk standards, as well as use standards, that are akin to other existing, low-density zoning districts that exist today (Suburban, Suburban Reserve, Suburban Estate). Hence, permissible development would not be encumbered as there would be established permitted uses within the proposed Open Space district.

As noted in the sponsor's testimony to the Planning Board at its November 7, 2023 public hearing, the genesis behind the ordinance is to provide a clear and reliable picture of open space in New Castle

⁴ Letter of Support – New Castle County Open Space Advisory Board

County, particularly through the County's GIS mapping system. Mapping reflecting existing, preserved open space has been and continues to be available through the County's GIS Division. The Department continuing to work with the State and the ordinance's sponsors to ensure that the GIS maps accurately reflect lands that are protected through open space programs. While there are lands protected through private programs, the creation of an open space zoning district can be considered an improvement in regard to clearly identifying publicly protected open space.

The New Castle County Comprehensive Plan (Strategy 1.1.6) states that the County should consider the addition of a preservation zoning category. Ord. 23-095 received a positive recommendation from the New Castle County Open Space Advisory Board on August 22, 2023. If adopted, Ord. 23-095 would require a comprehensive rezoning of all parcels eligible for Open Space pursuant to the parameters included in the ordinance, as well as a potential for a comprehensive rezoning of open space parcels every two years.

Standards for Text Amendment – Section 40.31.420 of the New Castle County Code

Pursuant to Section 40.31.420 of the New Castle County Code, in determining whether a text amendment shall be recommended or approved, all the following factors shall be considered:

A. Implementation of a new portion of the Comprehensive Development Plan.

New Castle County Comprehensive Plan updates as early as 2007 contemplate the establishment of an Open Space zoning district. If adopted, Ord. 23-095 would uphold the recommendations of the 2007 Comprehensive Plan update, the 2012 Comprehensive Plan update, and the most recent 2022 Comprehensive Plan update.

B. Implementation and achievement of the Comprehensive Plan's goals and objectives.

The 2022 Comprehensive Plan recommends consideration of the establishment of an Open Space zoning district. Ord. 23-095 achieves this recommendation.

C. Consistency with the provisions of this Chapter and the standards for similar uses.

N/A

D. Necessity to respond to State and/or Federal legislation.

N/A

E. Flexibility in meeting the objectives of this Chapter.

If adopted, Ordinance 23-095 will have little to no functional impact in regards to the objectives included in Chapter 40 of the UDC, due to the fact that the new zoning regulations would apply to lands already largely protected under other articles of the UDC. In addition, the proposed district includes permitted uses that would be expected in designated open space.

F. *Changes to conditions, interpretations, and/or clarifications to existing language for new uses.*

N/A

G. *Consideration of specific problems found in this Chapter.*

N/A

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the New Castle County Code and comments received from other agencies. The Department recommends **APPROVAL** of Ordinance 23-095 based on the analysis discussed above.

PLANNING BOARD RECOMMENDATION

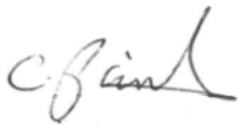
At a business meeting held on November 28, 2023, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Mr. Snowden and seconded by Ms. Visvardis, the Board voted to recommend **APPROVAL** of Ordinance 23-095.

The motion was adopted by a vote of 8-0-0-0 (In Favor: Peterson, Daigle, Gray, Visvardis, Snowden, Cochran, Cahill-Krout, Drake; In Opposition: None; Abstention: None; Absent None:).

No questions or comments were made by the Board.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would promote the convenience, order, and welfare of the present and future inhabitants of this state.



12/18/2023

Charuni Patibanda
General Manager
Department of Land Use

date



12/18/2023

Karen Peterson
Chair
Planning Board

date

Prime Sponsor(s): Mr. Tackett, Ms. Kilpatrick
Requested by: Department of Land Use
Date of introduction: July 25, 2023

SUBSTITUTE NO 1. TO ORDINANCE NO. 23-104

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 3 (“USE REGULATIONS”), ARTICLE 5 (“SITE CAPACITY AND CONCURRENCY CALCULATIONS”), ARTICLE 8 (“NONCONFORMING SITUATIONS”), ARTICLE 26 (“MODIFICATION OF STANDARDS”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”), ARTICLE 33 (“DEFINITIONS”), AND APPENDIX 7 (“GUIDING PRINCIPLES FOR DEVELOPMENT”), REGARDING DEVELOPMENT, REDEVELOPMENT, LARGE INDUSTRIAL STRUCTURES AND HEAVY RETAIL AND SERVICE USES, AND UPDATING THE GUIDING PRINCIPLES TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024
2 as amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan” or
3 “the Ordinance”), on July 26, 2022, and the County Executive approved the Ordinance
4 on August 4, 2022; and
5

6 **WHEREAS**, land development applications for warehousing facilities have
7 increased in size and operational intensity beyond that which was anticipated when the
8 Unified Development Code was adopted in 1997; and
9

10 **WHEREAS**, the New Castle County Comprehensive Plan guides development
11 and redevelopment to be sensitive to the context of neighboring residential
12 development; and
13

14 **WHEREAS**, the County recognizes the importance of updating its development
15 regulations to be consistent with, and implement, the New Castle County
16 Comprehensive Plan; and
17

18 **WHEREAS**, County Council has determined that the provisions of this Ordinance
19 substantially advance, and are reasonably and rationally related to, legitimate
20 government interests (i.e., promoting the health, safety, morals, convenience, order,
21 prosperity and/or welfare of the present and future inhabitants of this State).

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use Regulations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.110. Use Table.

Table 40.03.110 lists the type of uses...

Table 40.03.110 A GENERAL USE TABLE									Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,									Zoning District (Suburban and Special Character)							Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards
Commercial									Commercial							Commercial	
...Drive-in facility	L	N	N	L	L	L	L	L	L	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.316
Heavy retail and service	N	N	N	N	N	[Y]L	N	[Y] L	N	N	N	N	S	N	N	Table 40.03.522	<u>Section 40.03.339</u> Section 40.31.430
Light automobile service	L	N	N	N	L	Y	L	Y	Y	N	N	N	N	N	N	Table 40.03.522	Section 40.03.317
Mixed use	L	N	N	L	L	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Section 40.03.318, Division 40.25.200
Restaurants	L	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Division 40.25.200
Office	L	N	N	Y	Y	Y	Y	Y	Y	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.321, Division 40.25.200
Shopping center	N	N	N	N	N	Y	N	N	Y	N	N	N	N	N	N	Table 40.03.522	---
Vehicular sales, rental and service	N	N	N	N	N	[Y]L	N	N	N	N	N	N	N	N	N	Table 40.03.522	<u>Section 40.03.339</u>
Industrial Uses									Industrial Uses							Industrial Uses	
...Heavy industry	N	N	N	N	N	N	N	N	N	N	N	N	S	N	N	Table 40.03.522	---
Light industry	N	N	N	N	L	S	[Y] L	Y	N	N	N	N	Y	Y	N	Table 40.03.522	Section 40.03.333 for OR and CR Zoned Land <u>Table 40.03.210 for BP Zoned Land</u>
Recycling or storage	N	N	N	N	L	N	L	L	N	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210
Utilities, maintenance facilities	N	N	N	N	Y	L	Y	Y	N	N	N	N	Y	N	N	Table 40.03.522	Section 40.03.312
Utility, minor	L	L	L	L	L	L	L	L	L	L	L	L	Y	Y	L	Table 40.03.522	Section 40.03.334
Utility, major	S	S	S	S	S	S	S	L	S	S	S	S	L	S	S	Table 40.03.522	Section 40.03.312

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C GENERAL USE TABLE		
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)							Additional Standards (all districts)		
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards		
Solar energy system, large-scale	N	N	L	L	L	L	L	L	N	L	N	N	L	N	L	na.	Section 40.03.337		
Park and ride facility	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	---	Table 40.03.210		
Parking structures	N	N	N	S	S	S	S	S	S	S	N	N	S	N	N	---	Sections 40.03.528, 40.01.320, and 40.25.137		

Section 2. New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.200 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.03.210. Buffering, location, bulk and scale standards.

Table 40.03.210 provides standards that increase the degree of buffering...

Table 40.03.210 A.Limited and Special Use Standards						Table 40.03.210 B.Limited and Special Use Standards						Table 40.03.210 C. Limited and Special Use Standards	
Buffer Standards						Locational or Dimensional Standards						Additional Standards	
Bufferyards			Separation			Minimum				Maximum		Other	
Land Use	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel	Spacing	Site Area	Road Access	Open Space	Lot Area	Height		
Industrial Uses						Industrial Uses						Industrial Uses	
Compost operations												Section 40.03.336	
Extraction	All	0.8 (150 ft.)	8 ft. berm	Residential	500/100 ft.*		25 ac.					Section 40.03.324 *100' for Recreation, high intensity uses	
Heavy industry													
Light industry	<u>Residential and Schools</u>	<u>0.3</u>	<u>Minimum 8 ft. berm</u>	<u>Residential and Schools</u>	<u>500 ft.*</u>							<u>Requirements for OR and CR Zoned Land See Section 40.03.333</u> <u>*500 ft. as measured to any Light Industrial building or structure</u>	
Recycling or storage	All exterior storage	0.3	8 ft. fence or 4 ft. berm									The use is a limited use in the OR and BP zoning districts only where there is no exterior storage, and all material is stored inside buildings with impervious floors.	
Utilities, minor												<u>Section 40.03.334</u>	
Utilities, major	All exterior storage of	0.3	4 ft. berm										

Table 40.03.210 A.Limited and Special Use Standards						Table 40.03.210 B.Limited and Special Use Standards						Table 40.03.210 C. Limited and Special Use Standards
Buffer Standards						Locational or Dimensional Standards						Additional Standards
Bufferyards			Separation			Minimum				Maximum		Other
Land Use	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel	Spacing	Site Area	Road Access	Open Space	Lot Area	Height	
Utilities, maintenance facilities	heavy equipment and materials											
Other Uses						Other Uses						Other Uses
Airports				Residential and schools	500 ft.		300 ac.					Section 40.03.325 and Section 40.03.432
Commercial communications towers												Section 40.03.326
Exterior lighting for outdoor recreational uses												Section 40.31.430, 40.31.431, and 40.31.432
Park and ride facility	Residential	0.3		Residential								
Parking structures												Sections 40.03.528, 40.01.320, and 40.25.137
Temporary Uses						Temporary Uses						Temporary Uses
Temporary office, security, storage or classroom modulars or trailers				Residential	50 ft.							3 year nonrenewable permit, except that permits for temporary classrooms may be renewed by the Department. Shall provide required bufferyard for the principal use at adjacent lot line(s). Public schools shall show only the 50' separation on a site plan
Concrete/asphalt batch plant												Section 40.03.327
Contractor's office												
Model homes/sale office												Section 40.03.335
Commercial temporary outdoor sales												Section 40.03.329
Public interest and special events												Section 40.03.330
Temporary miscellaneous sales												Section 40.03.331

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.03.333. Light Industry uses in OR, or and CR zoning districts.

A. ~~The following light industry uses as defined in Section 40.33.270 D are to be considered special uses and may only be permitted in the OR zoning district with the approval of a special use permit by the Board of Adjustment: heavy construction (NAICS 237); wholesale trade (NAICS 42); trucking transportation (NAICS 484); transit and ground passenger transportation maintenance (NAICS 485), service and storage facilities (NAICS 487); support activities for transportation (NAICS 488);~~

miniwarehousing and self storage units (NAICS 53113); commercial and industrial machinery equipment rental (NAICS 5324); marina and associated uses (NAICS 71393); automotive paint and body shop (NAICS 811121); and, commercial and industrial repair (NAICS 8113). Light Industry uses as defined in Section 40.33.270.D are considered Limited Uses in the OR zoning district, except that the following uses require a special use permit:

Construction of buildings (NAICS 236)
Heavy and civil engineering construction (NAICS 237)
Wholesale trade (NAICS 42)
Trucking transportation (NAICS 484)
Transit and ground passenger transportation maintenance (NAICS 485)
Service and storage facilities (NAICS 487)
Support activities for transportation (NAICS 488)
Miniwarehousing and self storage units (NAICS 53113)
Commercial and industrial machinery equipment rental (NAICS 5324)
Marina and associated uses (NAICS 71393)
Automotive paint and body shop (NAICS 811121)
Commercial and industrial repair (NAICS 8113)
Heavy industry, where the business is less than twenty thousand (20,000) square feet
Warehousing and storage facilities, including logistics services related to the distribution of goods (NAICS 493)

B. The only Light Industry use ...

Sec. 40.03.334. Minor utilities.

A. Any new utility substation that transmits ...

B. Elevated storage tanks and standpipes.

1. Any new elevated storage tank or standpipe ...

3. The Department following the receipt of a utility plan ~~an~~ exploratory submission for an elevated storage tank or standpipe shall must schedule the application for review and approval at a regularly scheduled Planning Board public hearing. The Planning Board shall ~~will~~ review the proposal and shall consider the impacts of the proposed tank on adjoining properties. Planning Board approval of the exploratory sketch plan ~~shall be~~ is required prior to submission of a record plan to the Department and shall must not be withheld where Subsections B.1 and B.2 have been satisfied by the applicant. However, the Planning Board approval may contain certain additional conditions deemed reasonably necessary by the Planning Board to protect adjacent land uses including requirements for fencing, landscaping, and tank color.

4. For purposes of this Section, the term...

Sec. 40.03.339. Commercial Uses.

The following requirements apply to heavy retail and service, vehicular sales, rental and service uses established within one hundred (100) feet of a residentially zoned parcel or use, whichever is closer, as measured from the parcel line of the residential use or zoned parcel to the proposed nonresidential use or structure:

- A. The site must be designed to minimize noise impact on neighboring properties. A noise study must be submitted to evaluate this impact.
- B. The site must be designed so that parking, loading, and circulation minimize the glare from vehicular lights visible to neighboring residential properties.
- C. The bufferyards, street trees, berming, and on-lot landscaping is upgraded to mask the development.
- D. Lighting must be designed so that there is zero (0) footcandle at the property line of the residential area.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.400 (“Individual use standards”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.03.410. Accessory uses, residential.

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

- A. *General standards.* Unless otherwise provided ...
- E. *Fences.* Fences may be permitted in all yards and all yard setbacks and shall ~~must~~ be constructed of materials specifically designed for fences and may not include barbed or razor wire. Fence panels and fence materials may not exceed six (6) feet in height. To account for installation on sloping ground and any necessary space between the ground and the bottom of the fence panels or materials, the top of the fence panels, materials, and posts may not exceed seven (7) feet in height when measured from the ground, except as permitted in Subsection F G.
- F. *Satellite dish or antenna.* Satellite dishes (over three (3) feet in diameter) or...

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrency Calculations”), Division 40.05.050 (“Applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.05.050. Applicability.

At the preapplication stage for a rezoning or a major or minor subdivision or land development proposal, the applicant shall comply with the requirements of this Article and shall submit a complete site carrying capacity analysis pursuant to Section 40.05.510, except as follows.

A. A site resource capacity analysis...

G. Reserved.

H. Proposed public facilities that are needed to support development such as schools, parks on government land, libraries, sewer, police, fire stations, or hospitals shall be exempt from this Article, Article 10 (excluding floodplain or federal or State wetland regulations), Article 14, and Table 40.03.210, Table 40.04.111 (excluding lighting regulations), and ~~Section 40.04.240~~ Division 40.04.200. Such development shall comply with the provisions of Article 11, however, the Department and DeDOT shall determine on a case-by-case basis the time frame by which any mitigation must be completed.

I. Division 40.05.100 of this Article and ...

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 8 ("Nonconforming Situations"), Division 40.08.100 ("General regulations"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.08.130. Alterations, enlargements, or extensions.

A. *Nonconforming use.* ...

B. *Nonconforming building, structure, or situation.* A nonconforming building, structure or situation other than a nonconforming use may be enlarged, extended or replaced only as provided below:

1. *Extension or enlargement.* Any new extension or enlargement, ~~one thousand (1,000) square feet or greater, shall~~ must comply with this Chapter. For any new extension or enlargement five thousand (5,000) square feet GFA or greater in the OR, BP, I, or HI zoning districts or one thousand (1,000) square feet GFA or greater in all other zoning districts, the existing nonconformities must be brought into compliance proportional to the increase in the proposed development, provided the total site development complies with the site capacity requirements of Article 5, and further provided that: ~~the existing nonconformities shall be brought into compliance proportional to the increase in the proposed development.~~

a. ~~The improvements shall~~ must be made to design elements such as, but not limited to, parking, buffers, landscaping, access, stormwater management, impervious cover, off-site transportation

improvements/capacity, and mitigation of damage to, or enhanced protection for existing natural/environmental resources.

b. ~~However, n~~Nonconforming building setbacks are not subject to this proportional improvement requirement.

c. ~~In recognition of existing site conditions, t~~The Department will consider improvements to the development where they are most needed, are appropriate, and can be physically accommodated.

2. *Alteration.* ...

3. *Restoration.* ...

4. *Replacement or repair.* ...

5. *Reconstruction.* ...

6. *Redevelopment and Brownfields.* ...

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 26 ("Modification of Standards"), Division 40.26.200 ("Zoning modification"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.26.260. ~~Very large light~~ Large industrial structures.

The maximum size of an light proposed industrial building or addition is ~~has been set at four hundred fifty thousand (450,000) two hundred thousand (200,000) square feet of GFA~~ to prevent too large a building or structure from altering the general character of the district community. ~~Larger buildings can be permitted under several types of conditions.~~ Industrial buildings or additions larger than two hundred thousand (200,000) square feet of GFA may be approved dependent on compliance with this Chapter and the following standards:

A. ~~In large business parks where there is a central area of the park that is at least two (2) lots from any boundary, larger buildings may be permitted provided:~~

1. ~~The mass of the larger building will be largely screened by the surrounding buildings. The department may require more than the minimum two (2) lot distance from the edge of the business park.~~

2. ~~The site topography is such that the large buildings are not going to stand up above surrounding structures.~~

3. ~~The building itself should have articulations in the facade and roof line to reduce the apparent size of the building; or~~

243 4. The Department may require additional on lot landscaping and berming to
244 screen and break up the mass of the building. This may also include
245 berms that are located on the building foundation.
246

247 BA. The design of the business park development is such that a incorporates the
248 following variety of techniques are used to minimize visual impact ensure that the
249 public, neighboring property owners, or drivers on adjoining roads are not aware
250 of the mass. Several of the following techniques may be required by the
251 Department to achieve that result:
252

253 1. The whole business park development has a common architectural
254 design, including the use of common facade materials, window treatment,
255 and roof lines, etc.
256

257 2. The building is designed to reduce its apparent mass by having building
258 wings, articulated facade, a reduced height by setting the ground floor
259 partially below grade, or locating the building topographically so that it is
260 better screened by surrounding buildings.
261

262 3. The massing of buildings on the periphery of the development to screen
263 the larger buildings to the rear.
264

265 4. The bufferyards, street trees, berming, and on-lot landscaping is
266 upgraded, where appropriate, to mask the development.
267

268 5. The site plan must shall be designed so that the actual view of the larger
269 building located down the street is such that the scale of the larger
270 building is not apparent.
271

272 G. Screening or special design treatment shall not be required on boundaries with
273 industrial or heavy industrial land unless an arterial or collector road is the
274 boundary.
275

276 B. Where large industrial structures are proposed to be adjacent to an existing
277 residential use or residential zoning district, lighting must be designed so that
278 there is zero (0) footcandle at the property line of the residential area.
279

280 C. The site must be designed to minimize noise impact on neighboring properties.
281 A noise study must be submitted to evaluate this impact.
282

283 D. The site must be designed so that parking, loading, and circulation minimize the
284 glare from vehicular lights visible to neighboring residential properties.
285

286 E. The plan must include elements of building design, site design and amenities
287 identified in the applicable Character Area set forth in Appendix 7. The
288 Department may require specific improvements to the development where they
289 are most needed, are appropriate, and can be physically accommodated.

F. Upon a finding by the Department that the exploratory plan is in general compliance with this Chapter, and receipt of a narrative identifying how the proposal addresses the conditions of this section, the plan shall be scheduled for a Planning Board public hearing on the next available hearing date. The Planning Board will review the proposal and consider the effects of the proposed structure on adjoining properties. Planning Board review of the exploratory sketch plan is required prior to submission of a record plan to the Department.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.700 (“Reviews and types of plans”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.31.720. Subdivision plan review.

The types of subdivision include minor, major, special subdivisions (rural and staged), title subdivisions, ~~utility plans~~, conversion plans and subdividing the residual land from a special subdivision. Each type may require a preapplication conference, exploratory plan, preliminary plan, or record plan review as indicated in Table 40.31.720. No land may be sold, transferred, or offered for sale until a record plan has been recorded.

Table 40.31.720 Required Plan Submissions			
<i>Subdivision</i>	<i>Exploratory</i>	<i>Preliminary</i>	<i>Record</i>
Minor (resubdivisions, utility , title, record conversion)	Y		Y
Major	Y	Y	Y
Rural	Y		Y
Staged	Y	Y	Y
NOTES: Y = required			

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.33.270. Industrial uses.

- A. *Compost operations* (NAICS 325314). ...
- B. *Extraction*. ...
- C. *Heavy industry*. ...

D. *Light industry*. This category is designed to accommodate limited intensity levels of manufacturing and assembly activities, storage, warehousing, services, associated offices and similar uses. This includes the following uses:

Construction of buildings (NAICS 236) ...

Warehousing and storage facilities, including logistics services related to the distribution of goods (NAICS 493)

Information industries (NAICS 51) ...

Division 40.33.300. General definitions.

This Division contains the definition of words used in this Chapter . . .

Subdivision

A. The division or redivision of a lot, tract, or parcel of land, by any means...

B. The division or allocation of land for the opening, widening or extension...

C. The elimination of one (1) or more lot lines through the recordation of a deed that eliminates common property lines between lots that have not been previously depicted on an approved land development plan or between lots within an approved land development plan shall not be considered subdivision for purposes of this Chapter, provided the resulting lot(s) is in conformance with this Chapter. The deed shall indicate that the purpose of this deed is to comply with the definition of subdivision in Section 40.33.300, exempting subdivision review to eliminate one (1) or more interior division lines affecting the herein described property.

Section 10. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Appendix 7 ("Guiding Principles for Development"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

APPENDIX 7: GUIDING PRINCIPLES FOR DEVELOPMENT

1. Purpose and Applicability.

A. This Appendix establishes general design principles and expectations...

E. The Guiding Principles will apply to land development projects located in the five "character areas" defined below. Some properties within the County are not located in defined character areas and, therefore, will not be subject to these guidelines.

F. All applications subject to New Castle County...

2. Character Areas.

A. The Comprehensive Development Plan ...

B. The Guiding Principles achieve the foregoing through dividing the County into five (5) Character Areas, consistent with the ~~eight (8) future land use categories designated by the Comprehensive Development Plan: Residential Neighborhood, Mixed Residential Neighborhood, Corridor, Center, and New Community Development~~ future land use designations and policies in the Comprehensive Development Plan. For additional clarity, the relationship between zoning districts, future land use categories, and their corresponding character area designations, are shown below:

Table 1
Character Area Relationships

Zoning Districts	Strategies for State Policies and Spending Areas	Comprehensive Development Plan Future Land Use Categories	General Description	Guiding Principles Character Areas
... ST, TN, applicable NC districts	Levels 1 & 2	High Density Residential	> 8 dwelling units/acre	Residential Mixed Neighborhood
HI	Levels 1 & 2	Heavy Industrial	Larger heavy industrial developments with access to rail lines or navigable marine waterways	Not addressed—regulated by existing UDC standards
CN, CR, ON, OR, BP, I, applicable NC Districts	Levels 1 & 2	Commercial/Office/Industrial Development Area Type 1 (Commercial Corridor Development)/Type 2 (Employment-based Corridor Development)/Community Development Areas	- Higher densities - Redevelopment or mixed-use centers - Transit supportive	Corridor Center
<u>CN, CR, ON, OR, BP, I, and HI</u>	<u>Levels 1 & 2</u>	<u>Business Flex and Manufacturing</u>	<u>High intensity commercial and employment-based uses permitting integrated residential</u> <u>Redevelopment or mixed-use centers</u> <u>Transit supportive</u>	<u>Commercial and Employment Centers</u>

CN, CR, ON, OR, BP	Levels 1 & 2	New Community Development Area	- Density goal 3-5 dwelling units per acre - Areas providing walkable, transit-supportive, community centers that transition to surrounding suburban areas	New Community Development...
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C. The Comprehensive Development Plan has ...

3. Guiding Principles and Character Areas.

A. ~~The Guiding Principles align~~ This Appendix provides specific guidance on the five (5) character areas to the future land use categories in the Comprehensive Development Plan: Residential Neighborhood, Mixed Residential Neighborhood, Commercial and Employment Centers, Corridor, and New Community Development. ~~These Appendix does not address the Heavy Industrial and Resource & Rural Preservation categories are not addressed here because they are regulated by the UDC, and do not require the kind of design and amenity regulations established in these Guiding Principles because land use policy set by the Comprehensive Development Plan encourages preservation efforts in Resource Preservation areas. Standards for Hamlet and Village design are in Article 25.~~

B. The following table summarizes the Guiding Principles for each character area:

Table 2
Summary of Design Principles

	Residential Neighborhood	Mixed Residential Neighborhood	Corridor	Commercial and Employment Centers	New Community Development
Vision	Primarily Single-Family detached, low densities	Mix of residential types, from high density single family to apartments, with small scale commercial	Mix of commercial and employment-based uses with supportive residential, <u>higher densities, redevelopment, or mixed-use centers, transit supportive</u>	High intensity commercial and employment-based uses, <u>with permitting integrated residential, redevelopment, or mixed-use centers, transit supportive</u>	Mix of commercial or employment-based uses; may include supportive residential

	Residential Neighborhood	Mixed Residential Neighborhood	Corridor	Commercial and Employment Centers	New Community Development
Building:					
Façade Design	No special considerations except in Home Town or Neighborhood Preservation districts	Highly articulated façade with a high level of transparency	Highly articulated façade with a high level of transparency, with more flexible standards away from the corridor	Moderately to highly articulated façade with a high level of transparency, with flexible standards for designated "B" streets	Moderately articulated façade with transparency, with flexible standards for designated "B" streets...
Site:					
Building Placement	Buildings located to allow for front and rear yards	Buildings located near the sidewalk edge or set back	Buildings located near the sidewalk edge	Buildings located near the sidewalk edge <u>set back from the sidewalk edge or along sidewalks at exterior</u>	Buildings set back from the sidewalk edge or along sidewalks at exterior
Parking	No special considerations	Parking dispersed in small modules / Quantity limited	Parking located to the rear or side of buildings in small modules / <u>Quantity limited</u>	Parking located to the rear of buildings in small modules <u>or set back from the sidewalk edge in landscaped lots / Quantity limited</u>	Parking set back from the sidewalk edge in landscaped lots / Sufficient quantity...
Amenities:					
Open / Civic Spaces	High level of passive open space oriented around natural features	Open space primarily provided as patios and courtyards limited urban landscaping to promote pedestrian orientation and reduce visual impacts of parking	Some open space provided as patios and courtyards/ <u>significant</u> landscaping to reduce visual impacts of parking and enhance community image	Significant perimeter landscaping to enhance community image <u>or transition in scale where adjoining other uses.</u>	Significant perimeter landscaping or transition in scale where adjoining other uses

399 **4. Residential Neighborhood...**

401 **5. Mixed Residential Neighborhood...**

403 **6. Corridor.**

405 A. *Vision.*

407 1. The Corridor designation applies to land identified as Type 1 (Commercial
408 Corridor Development), Type 2 (Employment-based Corridor
409 Development) and Community Development Areas in the Comprehensive
410 Development Plan.

412 2. Corridors link ...

414 23. The Corridor designations ...

416 34. There are two types of Corridor...

418 4.5. Employment-based Corridor developments...

420 6. Community Development Areas should utilize elements from Commercial
421 and Employment based Corridors to achieve site design and built form
422 consistent with their community plans identified in the Comprehensive
423 Development Plan.

425 B. *Building Design....*

427 **7. Commercial and Employment Centers.**

429 A. *Vision.*

431 1. Commercial and Employment Centers are gathering places situated within
432 neighborhoods or at the edges of adjoining neighborhoods or
433 communities. Centers offer access to retail, employment and services,
434 civic and public benefit uses such as schools, churches and post offices,
435 and, in some cases, residential options. The Center designation allows for
436 the creation of a critical mass of retail services, multi-family housing, and
437 public spaces at strategic locations, such as arterial street intersections
438 and/or areas served by high-frequency transit lines. Areas designated as
439 Centers transform into highly-walkable areas with broad, pedestrian-
440 friendly sidewalks, trees, landscaping and local-serving uses. New
441 development will incorporate community amenities, such as open space,
442 and neighborhood-compatible uses, such as appropriately scaled office
443 uses.

2. ~~There are two types of Center developments: Commercial and Employment-based. Commercial Centers include commercial retail, institutional, or employment-based uses such as offices and residential uses.~~ Commercial Centers range in character and intensity. Some are small-scale, draw from the surrounding neighborhoods, and have limited amounts of housing as well as some office. Others have a more urban character with a greater intensity and include more opportunities for housing. As with Corridors, the development in the Center should include both “A” and “B” streets to offer design flexibility while ensuring that the development provides high design quality along streets with both vehicular and pedestrian traffic.

3. ~~Employment-based~~ Centers may include business campus environments ...

B. *Building Design.*

1. Orientation...
2. Frontage.– ~~Permitted e~~Entry elements are as follows: ...

C. *Site Design.*

1. A Center is should be configured around a street network, with high quality development concentrated along the entryway to the development or a designated “A” Street.
2. A Center is should be divided into 2 sub-areas:...
6. Accessory Structures and Uses...
- a. Permitted accessory structures ...
- b. In the Interior zone of a Commercial Center, gas pumps or drive-through facilities ~~are allowed~~ should only be located on lots with frontage on “B” streets.
- c. Along “A” streets, drive-through facilities ~~are allowed~~ only be located in ...

D. *Amenities.* ...

Section 11. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 12. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 13. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof as not as new enactments regardless if severability is possible.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 Del. C. § 1156 and shall only apply to Land Use applications submitted after such date(s) unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Sec. 40.03.110. This amendment makes heavy retail and service as well as vehicular sales, rental and service limited uses pursuant to limitations in Section 40.03.339.

Sec. 40.03.333. This amendment clarifies all light industry uses other than those listed in Section 40.03.333 are allowed as Limited Uses. Warehousing and storage facilities in the OR district are allowed as a Special Use. The amendment updates the warehouse storage facilities consistent with changes to Section 40.3.270.

Sec. 40.03.334. This amendment clarifies existing code language and removes references to utility plans.

Sec. 40.03.339. This amendment establishes limited use standards for heavy retail and service, vehicular sales, rental, and service uses established within one hundred (100) feet of a residentially zoned parcel or use.

Sec. 40.03.410. This amendment clarifies existing code language and corrects an internal code reference.

Sec. 40.05.050. This amendment clarifies the bulk standards that apply to proposed development and redevelopment and updates regulations for processing public facilities necessary to support development. The modifications would make the considerations during review consistent, as recently adopted changes created contradictions regarding landscaping requirements.

Sec. 40.08.130. This amendment clarifies the section caption, clarifies that nonconforming uses are not included among the nonconforming situations that may be expanded, clarifies that enlargements less than 1,000 square feet GFA must comply with this Chapter, provides that enlargements in certain districts greater than 5,000 square feet GFA must be brought into proportional compliance.

Sec. 40.26.260. This amendment expands the section to include industrial structures over 200,000 sf GFA, adds standards to minimize adverse effects on neighboring properties. This amendment also requires a public hearing by the Planning Board for the applicant to receive feedback from the Planning Board and the public regarding the application for a large industrial structure. The hearing is to be conducted in the same manner as that of a major land development review.

Sec. 40.31.720. This amendment eliminates references to utility plans.

Sec. 40.33.270. This amendment clarifies that logistics services related to the distribution of goods are considered light industry uses as warehousing and storage facilities (NAICS 493), consistent with the NAICS definition for Warehousing and Storage.

Div. 40.33.300. This amendment limits the lot consolidation procedure to unrecorded lots and lots within recorded land development plans.

Appendix 7. This amendment modifies the Guiding Principles for Development to be consistent with changes in the 2022 Update to the Comprehensive Development Plan.

Substitute No. 1. The following changes are included in Substitute No. 1:

Table 40.03.110. This amendment adds the section caption and designates Light Industry as a Limited Use in the BP zoning district subject to Table 40.03.210.

Table 40.03.210. This amendment adds the section caption and establishes Limited Use standards for Light Industry in the BP zoning district to protect residential and school uses, and clarifies that the 500 ft distance is to be measured to light industrial buildings or structures.

Sec. 40.03.333. This amendment includes heavy industry, where the business is less than twenty thousand (20,000) square feet as a Light Industry use that requires a Special Use in the OR zoning district.

Sec. 40.03.339. This amendment clarifies that the 100 ft distance is to be measured from the parcel line. This amendment also includes a requirement that sites be designed to minimize noise impacts on adjacent property based on the noise study.

Sec. 40.26.260. This amendment clarifies that the provisions for Large Industrial structures apply for new buildings or additions that exceed 200,000 sf of GFA. This amendment also clarifies that upgraded buffering to mask the development only occurs where appropriate. This amendment also includes a requirement that sites be designed to minimize noise impacts on adjacent property based on the noise study.

FISCAL NOTE: There is no discernible fiscal impact upon the adoption of this Ordinance.

Introduced by: Mr. Tackett, Ms. Kilpatrick
Date of introduction: July 25, 2023

ORDINANCE NO. 23-104

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 3 (“USE REGULATIONS”), ARTICLE 5 (“SITE CAPACITY AND CONCURRENCY CALCULATIONS”), ARTICLE 8 (“NONCONFORMING SITUATIONS”), ARTICLE 26 (“MODIFICATION OF STANDARDS”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”), ARTICLE 33 (“DEFINITIONS”), AND APPENDIX 7 (“GUIDING PRINCIPLES FOR DEVELOPMENT”), REGARDING DEVELOPMENT, REDEVELOPMENT, LARGE INDUSTRIAL STRUCTURES AND HEAVY RETAIL AND SERVICE USES, AND UPDATING THE GUIDING PRINCIPLES TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN

WHEREAS, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan” or “the Ordinance”), on July 26, 2022, and the County Executive approved the Ordinance on August 4, 2022; and

WHEREAS, land development applications for warehousing facilities have increased in size and operational intensity beyond that which was anticipated when the Unified Development Code was adopted in 1997; and

WHEREAS, the New Castle County Comprehensive Plan guides development and redevelopment to be sensitive to the context of neighboring residential development; and

WHEREAS, the County recognizes the importance of updating its development regulations to be consistent with, and implement, the New Castle County Comprehensive Plan; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.110 (“Use table”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE								Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)								Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards		
...Commercial									Commercial								Commercial		
...Drive-in facility	L	N	N	L	L	L	L	L	L	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.316		
Heavy retail and service	N	N	N	N	N	[Y]L	N	[Y]L	N	N	N	N	S	N	N	Table 40.03.522	<u>Section 40.03.339</u> Section 40.31.430		
Light automobile service	L	N	N	N	L	Y	L	Y	Y	N	N	N	N	N	N	Table 40.03.522	Section 40.03.317		
Mixed use	L	N	N	L	L	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Section 40.03.318, Division 40.25.200...		
...Shopping center	N	N	N	N	N	Y	N	N	Y	N	N	N	N	N	N	Table 40.03.522	---		
Vehicular sales, rental and service	N	N	N	N	N	[Y]L	N	N	N	N	N	N	N	N	N	Table 40.03.522	<u>Section 40.03.339</u>		

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.333. Light Industry uses in OR [or]and CR zoning districts.

A. ~~[The following light industry uses as defined in Section 40.33.270 D are to be considered special uses and may only be permitted in the OR zoning district with the approval of a special use permit by the Board of Adjustment: heavy construction (NAICS 237); wholesale trade (NAICS 42); trucking transportation (NAICS 484); transit and ground passenger transportation maintenance (NAICS 485); service and storage facilities (NAICS 487); support activities for transportation (NAICS 488); miniwarehousing and self storage units (NAICS 53113); commercial and industrial machinery equipment rental (NAICS 5324); marina and associated uses (NAICS 71393); automotive paint and body shop (NAICS 811121); and, commercial and industrial repair (NAICS 8113).]~~Light Industry uses as defined in Section 40.33.270.D are considered Limited Uses in the OR zoning district, except that the following uses require a special use permit:

Heavy construction (NAICS 237)
Wholesale trade (NAICS 42)
Trucking transportation (NAICS 484)
Transit and ground passenger transportation maintenance (NAICS 485)
Service and storage facilities (NAICS 487)
Support activities for transportation (NAICS 488)
Miniwarehousing and self storage units (NAICS 53113)
Commercial and industrial machinery equipment rental (NAICS 5324)
Marina and associated uses (NAICS 71393)
Automotive paint and body shop (NAICS 811121)
Commercial and industrial repair (NAICS 8113)
Warehousing and storage facilities, including logistics services related to the distribution of goods (NAICS 493)

B. The only Light Industry use ...

Sec. 40.03.334. Minor utilities.

A. Any new utility substation that transmits ...

B. Elevated storage tanks and standpipes.

1. Any new elevated storage tank or standpipe ...
3. The Department following the receipt of ~~[a utility plan]~~ an exploratory submission for an elevated storage tank or standpipe ~~[shall]~~ must schedule the application for review and approval at a regularly scheduled Planning Board public hearing. The Planning Board ~~[shall]~~ will review the proposal and ~~[shall]~~ consider the impacts of the proposed tank on adjoining properties. Planning Board approval of the exploratory sketch plan ~~[shall be]~~ is required prior to submission of a record plan to the Department and ~~[shall]~~ must not be withheld where Subsections B.1 and B.2 have been satisfied by the applicant. However, the Planning Board approval may contain certain additional conditions deemed reasonably necessary by the Planning Board to protect adjacent land uses including requirements for fencing, landscaping, and tank color.

4. For purposes of this Section, the term...

Sec. 40.03.339. Commercial Uses.

The following requirements apply to heavy retail and service, vehicular sales, rental and service uses established within one hundred (100) feet of a residentially zoned parcel or use:

- A. A noise study must be submitted to evaluate potential noise impact on adjacent properties.
- B. The site must be designed so that parking, loading, and circulation minimize the glare from vehicular lights visible to neighboring residential properties.

- C. The bufferyards, street trees, berming, and on-lot landscaping is upgraded to mask the development.
- D. Lighting must be designed so that there is zero (0) footcandle at the property line of the residential area.

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.400 (“Individual use standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.410. Accessory uses, residential.

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

- A. *General standards.* Unless otherwise provided ...
- E. *Fences.* Fences may be permitted in all yards and all yard setbacks and [~~shall~~]must be constructed of materials specifically designed for fences and may not include barbed or razor wire. Fence panels and fence materials may not exceed six (6) feet in height. To account for installation on sloping ground and any necessary space between the ground and the bottom of the fence panels or materials, the top of the fence panels, materials, and posts may not exceed seven (7) feet in height when measured from the ground, except as permitted in Subsection [~~F~~]G.
- F. *Satellite dish or antenna.* Satellite dishes (over three (3) feet in diameter) or...

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrency Calculations”), Division 40.05.050 (“Applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.05.050. Applicability.

At the preapplication stage for a rezoning or a major or minor subdivision or land development proposal, the applicant shall comply with the requirements of this Article and shall submit a complete site carrying capacity analysis pursuant to Section 40.05.510, except as follows.

- A. A site resource capacity analysis...
- G. Reserved.

- H. Proposed public facilities that are needed to support development such as schools, parks on government land, libraries, sewer, police, fire stations, or hospitals shall be exempt from this Article, Article 10 (excluding floodplain or federal or State wetland regulations), Article 14, and Table 40.03.210, Table 40.04.111 (excluding lighting regulations), and ~~[Section 40.04.240]~~ Division 40.04.200. Such development shall comply with the provisions of Article 11, however, the Department and DelDOT shall determine on a case-by-case basis the time frame by which any mitigation must be completed.
- I. Division 40.05.100 of this Article and ...

Section 5. *New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 8 (“Nonconforming Situations”), Division 40.08.100 (“General regulations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:*

Sec. 40.08.130. Alterations, ~~[/]~~enlargements, ~~or~~ ~~[/]~~extensions.

A. Nonconforming use. ...

B. Nonconforming building, structure, or situation. A nonconforming building, structure or situation other than a nonconforming use may be enlarged, extended or replaced only as provided below:

1. *Extension or enlargement.* Any new extension or enlargement~~[,one thousand (1,000) square feet or greater, shall]~~ must comply with this Chapter. For any new extension or enlargement five thousand (5,000) square feet GFA or greater in the OR, BP, I, or HI zoning districts or one thousand (1,000) square feet GFA or greater in all other zoning districts, the existing nonconformities must be brought into compliance proportional to the increase in the proposed development, provided the total site development complies with the site capacity requirements of Article 5, and further provided that:~~[the existing nonconformities shall be brought into compliance proportional to the increase in the proposed development.]~~
 - a. ~~[The i]~~Improvements ~~[shall]~~must be made to design elements such as, but not limited to, parking, buffers, landscaping, access, stormwater management, impervious cover, off-site transportation improvements/capacity, and mitigation of damage to, or enhanced protection for existing natural/environmental resources.
 - b. ~~[However, n]~~Nonconforming building setbacks are not subject to this proportional improvement requirement.

- c. ~~[In recognition of existing site conditions, t]~~The Department will consider improvements to the development where they are most needed, are appropriate, and can be physically accommodated.

2. *Alteration.* ...
3. *Restoration.* ...
4. *Replacement or repair.* ...
5. *Reconstruction.* ...
6. *Redevelopment and Brownfields.* ...

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 26 (“Modification of Standards”), Division 40.26.200 (“Zoning modification”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.26.260. ~~[Very large light]~~Large industrial structures.

The maximum size of an an [light] industrial building is [has been set at four hundred fifty thousand (450,000)]two hundred thousand (200,000) square feet of GFA to prevent too large a building or structure from altering the general character of the ~~[district]~~community. ~~[Larger buildings can be permitted under several types of conditions.]~~Industrial buildings larger than two hundred thousand (200,000) square feet of GFA may be approved dependent on compliance with this Chapter and the following standards:

- ~~[A. In large business parks where there is a central area of the park that is at least two (2) lots from any boundary, larger buildings may be permitted provided:~~
1. ~~The mass of the larger building will be largely screened by the surrounding buildings. The department may require more than the minimum two (2) lot distance from the edge of the business park.~~
 2. ~~The site topography is such that the large buildings are not going to stand up above surrounding structures.~~
 3. ~~The building itself should have articulations in the facade and roof line to reduce the apparent size of the building; or~~
 4. ~~The Department may require additional on lot landscaping and berming to screen and break up the mass of the building. This may also include berms that are located on the building foundation.~~

B]A. The design of the ~~[business park]~~development ~~[is such that a]~~incorporates the following ~~[variety of]~~ techniques ~~[are used]~~to minimize visual impact~~[ensure that the public,~~ neighboring property owners, or drivers on adjoining roads are not aware of the mass. Several of the following techniques may be required by the Department to achieve that result]:

1. The ~~[whole business park]~~development has a common architectural design, including the use of common facade materials, window treatment, and roof lines~~;~~ etc].
2. The building is designed to reduce its apparent mass by having building wings, articulated facade, a reduced height by setting the ground floor partially below grade, or locating the building topographically so that it is better screened by surrounding buildings.
3. The massing of buildings on the periphery of the development to screen the larger buildings~~[to the rear]~~.
4. The bufferyards, street trees, berming, and on-lot landscaping is upgraded to mask the development.
5. The site plan must~~[shall]~~ be designed so that the actual view of the larger building located down the street is such that the scale of the larger building is not apparent.

~~[C. Screening or special design treatment shall not be required on boundaries with industrial or heavy industrial land unless an arterial or collector road is the boundary.]~~

B. Where large industrial structures are proposed to be adjacent to an existing residential use or residential zoning district, lighting must be designed so that there is zero (0) footcandle at the property line of the residential area.

C. A noise study must be submitted to evaluate potential noise impact on adjacent properties.

D. The site must be designed so that parking, loading, and circulation minimize the glare from vehicular lights visible to neighboring residential properties.

E. The plan must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7. The Department may require specific improvements to the development where they are most needed, are appropriate, and can be physically accommodated.

F. Upon a finding by the Department that the exploratory plan is in general compliance with this Chapter, and receipt of a narrative identifying how the proposal addresses the conditions of this section, the plan shall be scheduled for a Planning Board public hearing on the next available hearing date. The Planning Board will review the proposal and

consider the effects of the proposed structure on adjoining properties. Planning Board review of the exploratory sketch plan is required prior to submission of a record plan to the Department.

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.700 (“Reviews and types of plans”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.720. Subdivision plan review.

The types of subdivision include minor, major, special subdivisions (rural and staged), title subdivisions,~~[utility plans,]~~ conversion plans and subdividing the residual land from a special subdivision. Each type may require a preapplication conference, exploratory plan, preliminary plan, or record plan review as indicated in Table 40.31.720. No land may be sold, transferred, or offered for sale until a record plan has been recorded.

Table 40.31.720 Required Plan Submissions			
<i>Subdivision</i>	<i>Exploratory</i>	<i>Preliminary</i>	<i>Record</i>
Minor (resubdivisions, [utility,] title, record conversion)	Y		Y
Major	Y	Y	Y
Rural	Y		Y
Staged	Y	Y	Y
NOTES: Y = required			

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.33.270. Industrial uses.

- A. *Compost operations* (NAICS 325314). ...
- B. *Extraction*. ...
- C. *Heavy industry*. ...

D. *Light industry*. This category is designed to accommodate limited intensity levels of manufacturing and assembly activities, storage, warehousing, services, associated offices and similar uses. This includes the following uses:

Construction of buildings (NAICS 236) ...

Warehousing and storage facilities, including logistics services related to the distribution of goods (NAICS 493)

Information industries (NAICS 51) ...

Division 40.33.300. General definitions.

This Division contains the definition of words used in this Chapter . . .

Subdivision

- A. The division or redivision of a lot, tract, or parcel of land, by any means...
- B. The division or allocation of land for the opening, widening or extension...
- C. The elimination of one (1) or more lot lines through the recordation of a deed that eliminates common property lines between lots that have not been previously depicted on an approved land development plan or between lots within an approved land development plan shall not be considered subdivision for purposes of this Chapter, provided the resulting lot(s) is in conformance with this Chapter. The deed shall indicate that the purpose of this deed is to comply with the definition of subdivision in Section 40.33.300, exempting subdivision review to eliminate one (1) or more interior division lines affecting the herein described property.

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Appendix 7 (“Guiding Principles for Development”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

APPENDIX 7: GUIDING PRINCIPLES FOR DEVELOPMENT

1. Purpose and Applicability.

- A. This Appendix establishes general design principles and expectations...
- E. The Guiding Principles will apply to land development projects located in the [~~five~~] "character areas" defined below. Some properties within the County are not located in defined character areas and, therefore, will not be subject to these guidelines.
- F. All applications subject to New Castle County...

2. Character Areas.

- A. The Comprehensive Development Plan ...
- B. The Guiding Principles achieve the foregoing through dividing the County into ~~[five (5)]~~ Character Areas, consistent with the ~~[eight (8) future land use categories designated by the Comprehensive Development Plan: Residential Neighborhood, Mixed Residential Neighborhood, Corridor, Center, and New Community Development]~~ future land use designations and policies in the Comprehensive Development Plan. For additional clarity, the relationship between zoning districts, future land use categories, and their corresponding character area designations, are shown below:

Table 1
Character Area Relationships

Zoning Districts	Strategies for State Policies and Spending Areas	Comprehensive Development Plan Future Land Use Categories	General Description	Guiding Principles Character Areas
... ST, TN, applicable NC districts	Levels 1 & 2	High Density Residential	> 8 dwelling units/acre	Residential Mixed Neighborhood
[HI]	[Levels 1 & 2]	[Heavy Industrial]	[Larger heavy industrial developments with access to rail lines or navigable marine waterways]	[Not addressed—regulated by existing UDC standards]
CN, CR, ON, OR, BP, I, applicable NC Districts	Levels 1 & 2	[Commercial/Office/Industrial Development Area Type 1 (Commercial Corridor Development)/Type 2 (Employment-based Corridor Development)/Community Development Areas]	- Higher densities - Redevelopment or mixed-use centers - Transit supportive	Corridor [Center]

<u>CN, CR, ON, OR, BP, I, and HI</u>	<u>Levels 1 & 2</u>	<u>Business Flex and Manufacturing</u>	• <u>High intensity commercial and employment-based uses permitting integrated residential</u> • <u>Redevelopment or mixed-use centers</u> • <u>Transit supportive</u>	<u>Commercial and Employment Centers</u>
CN, CR, ON, OR, BP	Levels 1 & 2	New Community Development Area	• Density goal 3-5 dwelling units per acre • Areas providing walkable, transit-supportive, community centers that transition to surrounding suburban areas	New Community Development...

C. The Comprehensive Development Plan has ...

3. Guiding Principles and Character Areas.

A. ~~[The Guiding Principles align]~~ This Appendix provides specific guidance on the ~~[five (5)]~~ character areas ~~[to the future land use categories in the Comprehensive Development Plan];~~ Residential Neighborhood, Mixed Residential Neighborhood, Commercial and Employment Centers, Corridor, and New Community Development. This~~[e]~~ Appendix ~~does not address the [Heavy Industrial and] Resource [& Rural] Preservation category[ies are not addressed here because they are regulated by the UDC, and do not require the kind of design and amenity regulations established in these Guiding Principles]~~ because land use policy set by the Comprehensive Development Plan encourages preservation efforts in Resource Preservation areas. Standards for Hamlet and Village design are in Article 25.

B. The following table summarizes the Guiding Principles for each character area:

Table 2
Summary of Design Principles

	Residential Neighborhood	Mixed Residential Neighborhood	Corridor	<u>Commercial and Employment Centers</u>	New Community Development
Vision	Primarily Single-Family detached, low densities	Mix of residential types, from high density single family to apartments, with small scale commercial	Mix of commercial and employment-based uses with supportive residential, <u>higher densities, redevelopment, or mixed-use</u>	High intensity commercial and employment-based uses, <u>[with] permitting integrated residential, redevelopment,</u>	Mix of commercial or employment-based uses; may include supportive residential

	Residential Neighborhood	Mixed Residential Neighborhood	Corridor	<u>Commercial and Employment Centers</u> <u>or mixed-use centers, transit supportive</u>	New Community Development
Building:					
Façade Design	No special considerations except in Home Town or Neighborhood Preservation districts	Highly articulated façade with a high level of transparency	Highly articulated façade with a high level of transparency, with more flexible standards away from the corridor	<u>Moderately to [H]highly articulated façade with a high level of transparency, with flexible standards for designated “B” streets</u>	Moderately articulated façade with transparency, with flexible standards for designated “B” streets]...
Site:					
Building Placement	Buildings located to allow for front and rear yards	Buildings located near the sidewalk edge or set back	Buildings located near the sidewalk edge	Buildings [located near the sidewalk edge] <u>set back from the sidewalk edge or along sidewalks at exterior</u>	Buildings set back from the sidewalk edge or along sidewalks at exterior
Parking	No special considerations	Parking dispersed in small modules / Quantity limited	Parking located to the rear or side of buildings in small modules [Quantity limited]	Parking located to the rear of buildings in small modules <u>or set back from the sidewalk edge in landscaped lots</u> [Quantity limited]	Parking set back from the sidewalk edge in landscaped lots / Sufficient quantity...
Amenities:					
Open / Civic Spaces	High level of passive open space oriented around natural features	Open space primarily provided as patios and courtyards limited urban landscaping to promote pedestrian orientation and reduce visual impacts of parking	Some open space provided as patios and courtyards/ <u>significant</u> landscaping to reduce visual impacts of parking and enhance community image	Significant perimeter landscaping to enhance community image <u>or transition in scale where adjoining other uses.</u>	Significant perimeter landscaping or transition in scale where adjoining other uses

4. Residential Neighborhood...

5. Mixed Residential Neighborhood...

6. Corridor.

A. Vision.

1. The Corridor designation applies to land identified as Type 1 (Commercial Corridor Development), Type 2 (Employment-based Corridor Development) and Community Development Areas in the Comprehensive Development Plan.
2. Corridors link ...
- [2]3. The Corridor designations ...
- [3]4. There are two types of Corridor...
- [4]5. Employment-based Corridor developments...
6. Community Development Areas should utilize elements from Commercial and Employment based Corridors to achieve site design and built form consistent with their community plans identified in the Comprehensive Development Plan.

B. Building Design....

7. Commercial and Employment Centers.

A. Vision.

1. Commercial and Employment Centers [~~are gathering places situated within neighborhoods or at the edges of adjoining neighborhoods or communities.~~ Centers] offer access to retail, employment and services, civic and public benefit uses such as schools, churches and post offices, and, in some cases, residential options. The Center designation allows for the creation of a critical mass of retail services, multi-family housing, and public spaces at strategic locations, such as arterial street intersections and/or areas served by high-frequency transit lines. Areas designated as Centers transform into highly-walkable areas with broad, pedestrian-friendly sidewalks, trees, landscaping and local-serving uses. New development will incorporate community amenities, such as open space, and neighborhood-compatible uses, such as appropriately scaled office uses.
2. [~~There are two types of Center developments: Commercial and Employment-based. Commercial Centers include commercial retail, institutional, or~~

~~employment-based uses such as offices and residential uses.~~ Commercial Centers range in character and intensity. Some are small-scale, draw from the surrounding neighborhoods, and have limited amounts of housing as well as some office. Others have a more urban character with a greater intensity and include more opportunities for housing. As with Corridors, the development in the Center should include both “A” and “B” streets to offer design flexibility while ensuring that the development provides high design quality along streets with both vehicular and pedestrian traffic.

3. Employment~~[-based]~~ Centers may include business campus environments ...

B. *Building Design.*

1. Orientation...
2. Frontage~~[-]~~ ~~[Permitted]~~ ~~[e]~~ Entry elements ~~[are as follows]~~: ...

C. *Site Design.*

1. A Center ~~[is]~~ should be configured around a street network, with high quality development concentrated along the entryway to the development or a designated “A” Street.
2. A Center ~~[is]~~ should be divided into 2 sub-areas:...
6. Accessory Structures and Uses...
 - a. Permitted accessory structures ...
 - b. In the Interior zone of a Commercial Center, gas pumps or drive-through facilities ~~[are allowed]~~ should only be located on lots with frontage on “B” streets.
 - c. Along “A” streets, drive-through facilities ~~[are allowed]~~ only be located in ...

D. *Amenities.* ...

Section 10. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 11. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 12. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof as not as new enactments regardless if severability is possible.

Section 13. Effective Date. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 Del. C. § 1156 and shall only apply to Land Use applications submitted after such date(s) unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Sec. 40.03.110. This amendment makes heavy retail and service as well as vehicular sales, rental and service limited uses pursuant to limitations in Section 40.03.339.

Sec. 40.03.333. This amendment clarifies all light industry uses other than those listed in Section 40.03.333 are allowed as Limited Uses. Warehousing and storage facilities in the OR district are allowed as a Special Use. The amendment updates the warehouse storage facilities consistent with changes to Section 40.3.270.

Sec. 40.03.334. This amendment clarifies existing code language and removes references to utility plans.

Sec. 40.03.339. This amendment establishes limited use standards for heavy retail and service, vehicular sales, rental, and service uses established within one hundred (100) feet of a residentially zoned parcel or use.

Sec. 40.03.410. This amendment clarifies existing code language and corrects an internal code reference.

Sec. 40.05.050. This amendment clarifies the bulk standards that apply to proposed development and redevelopment and updates regulations for processing public facilities necessary to support development. The modifications would make the considerations during review consistent, as recently adopted changes created contradictions regarding landscaping requirements.

Sec. 40.08.130. This amendment clarifies the section caption, clarifies that nonconforming uses are not included among the nonconforming situations that may be expanded, clarifies that enlargements less than 1,000 square feet GFA must comply with this Chapter, provides that enlargements in certain districts greater than 5,000 square feet GFA must be brought into proportional compliance.

Sec. 40.26.260. This amendment expands the section to include industrial structures over 200,000 sf GFA, adds standards to minimize adverse effects on neighboring properties. This amendment also requires a public hearing by the Planning Board for the applicant to receive feedback from the Planning Board and the public regarding the application for a large industrial structure. The hearing is to be conducted in the same manner as that of a major land development review.

Sec. 40.31.720. This amendment eliminates references to utility plans.

Sec. 40.33.270. This amendment clarifies that logistics services related to the distribution of goods are considered light industry uses as warehousing and storage facilities (NAICS 493), consistent with the NAICS definition for Warehousing and Storage.

Div. 40.33.300. This amendment limits the lot consolidation procedure to unrecorded lots and lots within recorded land development plans.

Appendix 7. This amendment modifies the Guiding Principles for Development to be consistent with changes in the 2022 Update to the Comprehensive Development Plan.

FISCAL NOTE: There is no discernible fiscal impact upon the adoption of this Ordinance.



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

Ordinance No. 23-104

Application No. 2023-0404-T

Development, Redevelopment, Large Industrial Structures, Heavy Retail / Services Use and Guiding Principles

November 28, 2023

Sponsor: Councilman Tackett (District 11), Councilwoman Kilpatrick (District 3)

Description: To Amend New Castle County Code Chapter 40 (also known as the Unified Development Code or "UDC) Regarding Large Industrial Structures, Heavy Retail / Services Use and Guiding Principles

EXECUTIVE SUMMARY

New Castle County supports development that fosters both a strong economy and high quality of life for county residents. Achieving this requires a regulatory balance that:

- Ensures that large industrial buildings are developed in a manner that is sensitive to surrounding communities,
- Enhances public participation in the planning process, and
- Encourages context-sensitive development through updates of the UDC's Guiding Principles.

Ordinance 23-104 achieves this through reducing the maximum size of industrial buildings from 450,000 SF to 200,000 SF of GFA and permit larger buildings when a development includes site and building improvements that currently exist in Article 26, have been determined appropriate for warehousing and storage uses (currently only in the CR district), and reduce glare and noise impacts on neighboring communities, through a process that includes a public hearing with the Planning Board. The ordinance also includes enhanced standards for heavy retail and service, vehicular sales, rental, and service uses, when established in very close proximity (100 feet from a residential parcel or use) and updates the Guiding Principles to be consistent with the 2022 Comprehensive Plan.

The Department recommends **CONDITIONAL APPROVAL** of Ordinance No. 23-104, with the condition that County Council consider amending the ordinance to:

1. Clarify that:
 - The 100 feet measurement regarding heavy retail uses and residentially zoned land is to be measured from the property line;
 - The maximum building size limitation for industrial buildings only apply to proposed buildings or additions exceeding 200,000 SF of GFA, not to include renovations of existing buildings; and
 - The upgraded bufferyards, street trees, berming, and on-lot landscaping is only required where determined appropriate.
2. Revise proposed sections 40.03.339 and 40.26.260 include a provision that read as follows:
 - The site is designed to minimize the noise impacts on neighboring residential properties.
3. Establish that Light Industrial Uses in the Business Park zoning district be considered Limited Uses consistent with less intense uses (restaurants and campgrounds) subject to:
 - Increased buffer of 0.3 opacity
 - Minimum 8 ft berm
 - 500 ft minimum distance from a Light Industrial use to a parcel with a residential use or school
4. Designate that in the Office Regional zoning district Heavy industry, where the business is less than twenty thousand (20,000) square feet require a Special Use permit.

DESCRIPTION

Ordinance 23-104 (Application 2023-0404-T) is an implementation product of substantial outreach and public feedback received during the comprehensive planning process. The ordinance proposes the following primary objectives:

- Update the Guiding Principles for nonresidential development to designate Character Areas to Future Land Use Designations
- Provide limited use standards for heavy retail and service, vehicular sales, rental and service uses established within one hundred (100) feet of a residentially zoned parcel or use;
- Ensure that large industrial buildings are developed in a manner that is sensitive to surrounding communities, while expanding opportunities for public participation in the planning process

BACKGROUND

New Castle County has had regulations limiting the size of very large light industrial structures (450,000 SF) dating back to the adoption of the Unified Development Code (UDC) in 1997. It has also, since that time included the opportunity to construct larger buildings if the proposed structure is either; (1) in a large business park where there is a central area of the park that is at least two (2) lots from any boundary, or that (2) the design of the business park is such that a

variety of techniques are used to insure that the public neighboring property owners, or drivers on adjoining roads are not aware of the mass and provides building and site design improvements.¹ Over the past quarter of a century those provisions have remained unchanged. There have been, however a several revisions to the UDC that further expanded the locations that are permitted to establish industrial uses.

Ordinance 08-096 – Industrial Use Consolidation²

The 2007 Update to the Comprehensive Plan (and subsequently the 2012 Update to the New castle County Comprehensive Plan) recognized the importance of New Castle County's industrial and manufacturing base and made recommendations to incentivize and expand locations that permitted industrial uses. The 2007 update further recommended that the county re-evaluate the various office and industrial uses in the Office Regional (OR), Business Park (BP), and Industrial (I) zoning districts and potentially consolidate those districts into one single district focused on economic development opportunities. This was in part based on the 2005 Base Realignment and Closure Commission process that was envisioned to bring about 30,000 new jobs to Maryland and New Castle County. Ordinance 08-096, envisioned as the first step in the consolidation process brought more parody in the permitted industrial GFA in the OR district by increasing the permitted floor area ratio, and by reducing the minimum site area for industrial uses in the BP district by half (50 to 25 acres). The County adopted several ordinances seeking to better encourage and incentivize economic development including permitting industrial uses in the Extraction District and creating the Economic Empowerment District, however the three districts have not been consolidated.³

Over the last 18 years there have been significant changes to New Castle County's economy, with several key employers either leaving the county or reducing their workforce. Over that time the number of jobs by place of work has dropped from 289,730 to 277,832 (-11,898 jobs) while the labor force has risen from 280,650 to 293,836 (+13,186 people), indicating a shift towards being more of a bedroom community.⁴ It is difficult to measure the impacts that the County's legislative efforts have had, considering the housing crash, COVID 19 and other unforeseen events, but it is evident that a significant shift in the economy has occurred.

¹ UDC 40.26.260 -

https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART26MOST_S40_26.260VELALIINST

² Ord. 08-096 -

<https://www3.newcastlede.gov/PDFDocument/default.aspx?DocumentID=80:FC40FF5826FBF7107D10260598B6C0724428DD1196872F86735C7182B4706D85BFB8AF53EDD17E8349C081B579095AB3&x=temp.pdf>

³ Ibid.

⁴ Delaware Population Consortium:

<https://stateplanning.delaware.gov/demography/documents/dpc/DPC2010v0.pdf> &
<https://stateplanning.delaware.gov/demography/documents/dpc/DPC2023v0.pdf>

2022 New Castle County Comprehensive Plan (Ord. 22-024)

The 2022 Update to the New Castle County Comprehensive Plan (The Plan) was the product of more than 2 years of extensive public outreach. A common thread from the early Let's Talk Workshops (September 2020) through the Listening Sessions (Spring 2022) as well as the formal public hearing process was the importance and desire to strike a balance between encouraging and incentivizing economic development with the potential impacts that future development can have on residential communities. The Plan took an honest look at the impacts that intensive nonresidential uses, located in too close of a proximity to residential communities including on our most vulnerable residents living in Environmental Justice communities. It made important recommendations that attention be paid to buffering and transitioning from higher intensity nonresidential uses to existing and future residential communities. It also made recommendations for mitigating the visual impacts of those developments along street frontages, providing a more desirable and safer environment for residents to live work and play.

Ordinance 23-053 – Redevelopment and Large Industrial Buildings⁵

Ordinance 23-053 was introduced on April 25, 2023, proposing significant changes to the redevelopment provisions in the UDC, opening the opportunity for projects to benefit from the incentives under redevelopment even if they require a variance. It also included a re-evaluation of the existing regulations pertaining to very large light industrial structures that proposed reducing the size to 200,000 SF of GFA, clarifying existing requirements, requiring a noise study, as well as requiring a public hearing before the Planning Board. Additionally, the Ordinance included provisions to improve the building's façade mitigate the impacts of vehicular glare on adjacent residential properties. The Ordinance was heard and reviewed favorably at PLUS, however, was subsequently tabled to pursue two separate ordinances; (1) a redevelopment ordinance and (2) an ordinance to revise the provisions for large industrial structures.

Since last summer the Department of Land Use has conducted 3 Redevelopment Listening Sessions and are currently working with County Council to draft a redevelopment ordinance that further incentives context sensitive development. The Department has also worked with County Council building on the proposed changes in Ordinance 23-053 regarding large industrial buildings, while expanding protections to communities adjacent to future heavy retail uses.

Application 2023-0404-T, Ordinance 23-104⁶

Ordinance 23-104 was introduced on July 25, 2023, at County Council proposing the changes in Ordinance 23-053 with regards to large industrial buildings, nonconforming uses, the Guiding Principles, as well as the proposed code clarifications. The ordinance also includes important

⁵ Ordinance 23-053/Application 2023-0213-T - <https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=765165>

⁶ Ordinance 23-104/Application 2023-0404-T - <https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=774574>

changes to site design and plan submission requirements for heavy retail and services, vehicular sales, and service uses within 100 feet of a residentially zoned parcel such as a noise study, reduction of permitted illumination levels at the residential property line, as well as improved site design and buffering.

PLUS REVIEW (Preliminary Land Use Service)

The PLUS Report, dated September 21, 2023, contains comments from several State agencies. The Office of State Planning Coordination reiterated their support for the 2022 New Castle County Comprehensive Plan and its goals and strategies. It also noted the ordinance's intent of fostering context-sensitive development, consistent with the Comprehensive Plan and increased opportunities for public participation. All other agencies had no objection to the approval of the ordinance.

Planning Board Public Hearing - November 7, 2023

Matthew Rogers, Planner for the Department of Land Use presented Ordinance 23-0404 at the November 7th joint New Castle County Department of Land Use and Planning Board Public Hearing. During his presentation, he discussed how the ordinance was derived from recommendations of the New Castle County Comprehensive Plan. Mr. Rogers also discussed the proposed changes to the UDC and directly addressed specific comments provided by the Committee of 100 including:

1. Revise language to clarify that the role of the Planning Board is solely to hold a Public Hearing and elicit public comment and that the Planning Board does not have the authority to make any recommendations as a result of the Public Hearing.
2. Provide the reasoning why industrial buildings subject to these special requirements was reduced from 450,000 square feet to 200,000 square feet.
3. Add clarifying language regarding the application of guiding principles and the role of the NCC Land Use Dept. regarding these guiding principles and whether they are discretionary or mandatory.
4. Remove the requirement that heavy retail uses now be considered limited uses;
5. Add language to clarify that the Ordinance will only apply to applications submitted to the Land Use Department after the Ordinance has been adopted, and not to pending applications.
6. Add clarifying language that the Ordinance applies to newly built fully enclosed buildings but will not apply to expansions/renovations to existing buildings.

7. Provide for an exception for existing sites that are destroyed by fire or other casualty so that the rebuilding of such existing buildings does not require compliance with these new standards.

Mr. Rogers discussed potential amendments to the ordinance in response to other recommendations of the Committee of 100 including:

- Clarifying that the 100 feet measurement regarding heavy retail uses and residentially zoned land is to be measured from the property line.
- That the maximum building size limitation for industrial buildings only apply to proposed buildings or additions exceeding 200,000 SF of GFA, not to include renovations of existing buildings.
- That upgraded bufferyards, street trees, berming, and on-lot landscaping is only required where determined appropriate.

He also discussed several other potential changes to the ordinance that would bring consistency to residential protections with regards to adjacent industrial uses to the Office Regional and Business Park zoning districts.

Planning Board members had several questions and comments in response to the presentation. Ms. Gray inquired about when an application would be subject to the provisions of the ordinance. Mr. Rogers responded that it would be from the time that the application was submitted. Ms. Gray stated that she understood that the proposed provisions would not apply to renovations of existing gross floor area but also asked if the proposed clarifying language would apply to expansions. Mr. Rogers explained that small expansions that would not result in the need for a Planning Board public hearing.

Charuni Patibanda, General Manager for the Department of Land Use, clarified that the Department took a lot of time to work with the business community, hearing their input and trying to respond as pragmatically as possible, but wanted to highlight that no one have forgotten the atmosphere at the October Public Hearing specifically regarding large industrial structures located directly adjacent to residential properties is a reality in New Castle County and that this ordinance is intended to protect the residencies in those circumstances. Specifically looking at the BP zoning district, which is intended to be a transitional zone between heavy industrial uses, through a less intense use, buffering residential uses. To not further buffer the large industrial structures, which are permitted in the BP district would be a disservice from what we are trying to accomplish. She then stated that she looked forward to hearing the public comment, but wanted to remind the board that this specific issue has come up several times in public meetings and that the Department has worked very hard to creatively allow for economic development as much as possible, while striking the balance with protecting residential communities. She also stated that the Department finds these buffering efforts to be an appropriate measure.

Ms. Peterson inquired if the ordinance was clear enough on who had review and approval authority to grant Special Use Permits. Mr. Rogers explained that the UDC (Article 30) already specifically gives approval authority to the Board of Adjustment for Special Use Permits. She then inquired if there were specific standards for reviewing and approving Special Use Permit. Mr. Rogers explained that there are standards in Article 31 that include consistency with the Comprehensive Plan and impact on adjacent communities. Ms. Peterson asked Mr. Rogers to clarify the change the Department is proposing to the draft ordinance's provisions regarding Heavy Retail and Services. Mr. Rogers stated that the Department is proposing a revision that would clarify that the 100-foot measurement is to be taken from the parcel line, and that the limited use standards would apply to development within that 100-foot distance. Ms. Peterson then asked why the ordinance proposes to reduce glare from vehicles as opposed to eliminating glare. Mr. Rogers explained that achieving an elimination of glare is difficult. Ms. Peterson described the effectiveness of berming at the Amazon logistic center at the Boxwood site at eliminating glare. Mr. Rogers stated that while the additional berming requirements proposed by the ordinance would in many cases eliminate glare, but that in some cases complete elimination may not be possible. She then asked if it was possible to limit the hours of operation for logistic operations. Mr. Rogers said that at this time we don't have enough information as to the appropriate limitation to strike the correct balance, but that it is something that could be examined in future legislation. Ms. Patibanda remarked that the intent is to strike the correct balance with economic development and that limiting hours at this time may be overly burdensome, and that the ordinance, as written will permit the Department to work with the applicant bring berms and other amenities to hopefully eliminate glare. If it isn't possible to eliminate the glare, we'd look to reduce it as much as possible. Ms. Peterson then discussed concerns regarding truck traffic from manufacturing facilities on residential streets. Ms. Peterson then inquired if the noise study could extend to adjacent roadways. Mr. Rogers explained that noise studies are performed with regards to operations that occur, and that he was unsure what was possible in the DelDOT right of way. Land Use General Manager Patibanda agreed to investigate the potential to address roadway noise. Ms. Gray voiced her appreciation for the Chair's comments regarding access. Ms. Peterson inquired as to the utility of the noise study. Mr. Rogers explained that the noise study would provide the opportunity to demonstrate that a proposed development would meet the County's noise regulations. Ms. Patibanda further explained that the study would serve as a tool for the Department to more effectively work with the applicant to reduce noise on the site. Ms. Peterson inquired if an applicant proposes development that exceeds the levels permitted in the County Code, would it be enough to deny approval of an application. Mr. Rogers & Ms. Patibanda explained that the noise regulations are not zoning or subdivision regulations and would not be able to stop a plan in the review process but would need to operationally comply with the noise regulations. Mary Jacobson, attorney for the Board of Adjustment informed the Board that the Ordinance could be amended to require that sites be designed to minimize noise as well as glare. Ms. Jacobson also voiced curiosity as to the number of plans in the pipeline that propose large industrial buildings that exceed 200,000 SF of GFA. She also asked if the County had considered employing the penned ordinance doctrine to make the ordinance applicable to plans in the review process, that were submitted after the ordinance was adopted. Ms. Patibanda discussed the Department's relationship to measuring

noise and illuminations levels as well as the Department's stance that in order to provide predictability, ordinances such as Ord. 23-104 not be retroactive. Ms. Peterson inquired if the Board could recommend that the Ordinance be retroactive. Mary Jacobson later clarified that the employing the penned would not impact plans that have been submitted prior to the introduction of the ordinance (July 25, 2023).

Ms. Patibanda stated that the Board could recommend that the Ordinance be made to be retroactive. She also remarked that there have been several developers who have voluntarily included measures proposed by the ordinance, and that the Department supports proactive improvements to plans that are sensitive to neighboring communities. Ms. Peterson reiterated her concern over the potential impacts for neighboring communities from projects in the review pipeline. Ms. Drake expressed her support for regulating noise pollution and making it a standard that could impact a plan's approval. Mr. Snowden asked the Department to clarify the proposed amendment regarding screening along certain roadways.

Public Comment

At the Public Hearing one member of the public spoke in favor of the ordinance and four spoke in opposition to the ordinance as written.

Support

Bruce Winegartner, resident in the Whitehall Community, stated his support for reducing the maximum size of industrial buildings from 450,000 SF to 200,000 SF. He also stated that the proposed regulations aren't too onerous on the developer and that they give the Department important tools. He also voiced his concern pertaining to potential pollution from warehousing near residential development.

Opposition

Elizabeth Keller, representing the Committee of 100, reiterated the Committee's support for changes to the proposed ordinance. She also discussed the need for balance and the importance of potential job opportunities for county residents as well as revenue for the county. Ms. Keller also remarked that the ordinance will stifle development and that we should be taking steps to move the economy forward as opposed to creating additional regulations. Joe Fitzgerald representing the New Castle County Chamber of Commerce voiced support for the changes proposed by the Committee of 100. He also identified the provisions related to noise pollution and the County's ability to enforce noise pollution regulations.⁷ He also remarked about potential that regulations can have an impact on development and the quality of life stating that "we don't want to just be a

⁷ 7 Del. C. § 7108 assigns the enforcement responsibility to Department of Natural Resources and Environmental Control. It also permits Counties and Municipalities to enforce the noise regulations.
(<https://delcode.delaware.gov/title7/c071/sc01/index.html>)

bedroom community for Philadelphia.” Ms. Peterson clarified that the noise regulations only apply to established businesses, not those in the planning businesses. Mr. Fitzgerald said that engineers, typically during the planning process, evaluate the noise to make sure that they’ll comply with State Code requirements. Kimberly Hoffman, Esq. discussed her experience using the existing provisions in the UDC for the Amazon Logistic Center at the Boxwood site, and her concern that the regulations in Ordinance 23-104 would either prevent such a development or significantly discourage such a development by requiring twice the buffer yard. She then stated that it is important to compare what is in the law today and what is being proposed before taking millions of dollars in tax revenue off the table (see the *Analysis* below). Ms. Hoffman concluded by stating that she didn’t understand why the County is considering changing the current regulations. Antoni Sekowski, Assistant Land Use Manager for the Department of Land Use, asked Ms. Hoffman if she had attended the October 17, Planning Board Public Hearing, where considerable concern was voiced by community members regarding a potential logistic center adjacent to the Whitehall community. Ms. Hoffman stated that she was not in attendance. Wendie Stabler, Esq. discussed the need for a distinction between new development and existing industrial parks that had been in existence for a long time. She also stated that she believes that the ordinance goes too far in trying to govern established industrial land patterns that predate much of the surrounding residential development. She also stated her support for the ordinance being revised to support minor modifications to industrial buildings not being subject to the proposed regulations.

Comments received while the record was open

Prior to the public hearing the Department of Land Use received correspondence from the Committee of 100, as well as from 6 other business representatives voicing support for the recommended changes made by the Committee of 100. These comments were forwarded to the Planning Board prior to the hearing.

After the hearing, and while the record was open, the Department received correspondence from 4 individuals that have been entered into the record and forwarded to the Planning Board for review. These emails included a request that the record be further held open, as well as support for the recommended changes made by the Committee of 100. Kimberly Hoffman, Esq also wrote about her concerns and the potential impact that Ordinance 23-104 could have on future Boxwood like developments.

Analysis

Ordinance 23-104 (Application 2023-0404-T) is an implementation product of substantial outreach and public feedback received during the comprehensive planning process. The ordinance seeks to achieve the following primary objectives:

- Update the Guiding Principles for nonresidential development to designate Character Areas to Future Land Use Designations
- Provide limited use standards for heavy retail and service, vehicular sales, rental and service uses established within one hundred (100) feet of a residentially zoned parcel or use;
- Ensure that large industrial buildings are developed in a manner that is sensitive to surrounding communities, while expanding opportunities for public participation in the planning process

Ordinance 23-104 designates Type 1 & 2 Corridor Areas in the Future Land Use Element of the Comprehensive Plan as the Corridor Area Character Areas. It additionally designates Manufacturing and Business Flex areas in the Future Land Use Element of the Comprehensive Plan as the Commercial and Employment Centers Character Areas. These proposed changes will bring the nonresidential components of the Guiding Principles into consistency with the Goals, Objectives, and Strategies of the Future Land Use Element. It also removes potential subjectivity regarding the assignment of Character Area, by directly connecting the nonresidential Character Areas to Future Land Use Designations through an ordinance.

Ordinance 23-104 addresses the fact that heavy retail and service, vehicular sales, rental, and service uses, when established in very close proximity (100 feet from a residential parcel or use, as measured from the parcel line) can have adverse impacts on the quality of life for adjacent residents. This can be anecdotally observed by reviewing Code Enforcement violations. The Ordinance establishes Limited Use standards that will continue to permit the establishment of these types of businesses but will require site design improvements and additional documentation to verify that the proposed use will meet noise regulations and minimize the impact that onsite lighting and vehicular glare will have on adjacent residential properties.

Ordinance 23-104 further addresses the impact that large industrial buildings have on neighboring communities (residential and nonresidential). Since 1997, New Castle County has restricted Light Industrial Buildings to 450,000 SF of GFA (7.89 football fields) uniformly across all zoning districts that permit light industrial uses, consistent with 9 Del. C. § 2602(b). As discussed above, the current regulations permitted developments such as the Amazon Logistic Center at the Boxwood site and the Logistic Center at the Tristate Mall. Objections were voiced regarding

concerns that buffering, masking noise and Guiding Principles concerns would prevent such development from occurring.

Gaging the potential impact of the legislation requires an understand what *new* regulations large light industrial buildings would be subjected to, looking at what requirements exist today and what is proposed for the future. The following standards are **existing requirements in Section 40.26.260 A & B for large light industrial buildings to exceed 450,000 SF in GFA:**

- The development has a common architectural design, including the use of common facade materials, window treatment, and roof lines.
- The building is designed to reduce its apparent mass by having building wings, articulated facade, a reduced height by setting the ground floor partially below grade or locating the building topographically so that it is better screened by surrounding buildings.
- The massing of buildings on the periphery of the development to screen the larger buildings.
- The bufferyards, street trees, berming, and on-lot landscaping is upgraded, to mask the development.
- The site plan must be designed so that the actual view of the larger building located down the street is such that the scale of the larger building is not apparent.

With regards to changes proposed above, Ordinance 23-104 merely consolidates 40.26.260 A & B to clarify existing requirements and reduce redundancy. The Ordinance proposes the additional plan submission requirements required for warehousing and logistic centers in the Commercial Regional (CR) district apply to all plans that propose large industrial buildings regardless of zoning district. These enhancements to Section 40.26.260 include the following:

- Where large industrial structures are proposed to be adjacent to an existing residential use or residential zoning district, lighting must be designed so that there is zero (0) foot candle at the property line of the residential area.
- A noise study must be submitted to evaluate potential noise impact on adjacent properties.
- The plan must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7. The Department may require specific improvements to the development where they are most needed, are appropriate, and can be physically accommodated.

These requirements were originally brought into the UDC with Ordinance 21-065, when expanding the permitted uses in the Commercial Regional (CR) district to permit warehousing and storage facilities, such as logistic centers. Jenifer Kmiec, representing and on behalf of the Committee of 100, supported the proposed requirements in Ordinance 21-065 as being appropriate for evaluating warehousing and storage facilities in the CR district. The Department argues that nearby communities are impacted by large industrial structures, and benefit from a 0.1 foot-candle reduction at the property line, enhanced design through including elements in the Guiding Principles, and a noise study to increase transparency as to future impacts of a development regardless of the underlying zoning district.

The Committee of 100 did request, at the public hearing for Ordinance 21-065, that warehousing and storage facilities in the CR be reviewed as Limited Uses as opposed to Special Uses, averting a Board of Adjustment review and approval. The County determined that the Special Use process was the appropriate public process to review those submissions due to their potential impact on the fabric of neighboring communities. The provisions that enable industrial structures to exceed 450,000 sf (200,000 sf proposed by Ord. 23-104) are in Article 26, a Subdivision Regulation (Article 40.33.300) and therefore the appropriate venue for a public hearing is at the Planning Board. The operative language in Ordinance 23-104, Section 40.26.260.F is consistent with Section 40.31.113 for Major Land Development Plans, and as such, for many plans would require no additional public hearings. Where Minor Land Development and Resubdivision Plans meet the threshold requirements of Article 40.26.260 the public would have an opportunity to provide input and feedback at a public hearing that they otherwise would not have. The Planning Board's role is consistent with their role in reviewing Major Land Development Plans; they hear, review, and comment as provided for in the UDC. They also can also make recommendations on actions that the Board determines to be appropriate consistent with Delaware State Law (Title 9, Chapter 13, §1304).

The final requirement for large industrial buildings proposed by Ordinance 23-104 is that the site be designed so that parking, loading, and circulation minimize the glare from vehicular lights visible to neighboring residential properties. Chairwoman Peterson specifically referenced berming and landscaping at the Boxwood Site as having effectively eliminated potential glare from the site. While the Department does not believe that elimination of glare is possible at all sites, we see the improvements at the Amazon Logistic Center at Boxwood to be the standard, with regards to minimizing glare through site design that all complicated redevelopments should aspire to.

Having considered the proposed regulations in Ordinance 23-104, the remaining consideration is whether 200,000 SF (just under 3.5 football fields in size) is a large building that can result in adverse impacts on adjacent communities (residential and nonresidential). Over the past 5 years, the Department of Land Use has reviewed a number of plans that would greatly benefit from a public process that would employ site and building design improvements on sites such as the Tristate Mall and the Boxwood Site. Ordinance 23-104 does not prevent or penalize good development; it calls for developers to follow in the footsteps of context sensitive development

that has already occurred in the county. It also gives the Department the necessary tools to engage in productive discussions with developers on utilizing massing, building and site design to minimize adverse impacts from noise pollution and glare neighboring residential communities. Furthermore, in addition to the provisions discussed above, development plans will still be required to meet traffic standards set by Article 11, as well as pollution standards set by DNREC. Requiring a public hearing for these applications will provide a valuable opportunity for residents to discuss these concerns with the developers and understand potential impacts of the development.

Potential Changes in a Substitute Ordinance

The Department of Land Use, has considered comments from the public as well as the Committee of 100 and other business groups and recommend that County Council consider a Substitute to Ordinance 23-104 that includes the following improvements:

1. Clarify that:
 - The 100 feet measurement regarding heavy retail uses and residentially zoned land is to be measured from the property line;
 - The maximum building size limitation for industrial buildings only apply to proposed buildings or additions exceeding 200,000 SF of GFA, not to include renovations of existing buildings; and
 - The upgraded bufferyards, street trees, berming, and on-lot landscaping is only required where determined appropriate.
2. Revise proposed sections 40.03.339 and 40.26.260 include a provision that read as follows:
 - The site is designed to minimize the noise impacts on neighboring residential properties.
3. Establish that Light Industrial Uses in the Business Park zoning district be considered Limited Uses consistent with less intense uses (restaurants and campgrounds) subject to:
 - Increased buffer of 0.3 opacity
 - Minimum 8 ft berm
 - 500 ft minimum distance from a Light Industrial use to a parcel with a residential use or school
4. Designate that in the Office Regional zoning district heavy industry, where the business is less than twenty thousand (20,000) square feet require a Special Use permit.

Standards of Review

Pursuant to Section 40.31.420 of the New Castle County Code, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

A. Implementation of a new portion of the Comprehensive Development Plan.

The 2022 Comprehensive Development Plan recommends incentivizing strong economic development policies, including in emerging industries, as a means for achieving and maintaining economic stability for New Castle County residents, expanding access to living-wage jobs. The Comprehensive Plan also calls for economic development to occur in a manner sensitive to neighboring communities. These policy recommendations are not inherently in conflict with each other. Scenario planning that underpins the overall vision for the plan, that evaluated economic and community development, relies on achieving this balance for the county to achieve the economic development and quality of life that it aspires to.⁸

Ordinance 23-104 accomplishes balance by reducing the maximum large industrial building size from 450,000 sf (7.89 football fields) to 200,000 sf (3.45 football fields) of GFA, and only permitting buildings to exceed 200,000 sf of GFA if they meet existing site and building design standards that were used to evaluate projects such as the Amazon Logistic Center at Boxwood and the Logistic Center at the former Tristate Mall location. Enhancing this process and raising the bar for future developments, the ordinance includes the requirement that sites are designed to minimize glare on adjacent residential properties. This is, as Chairwoman Peterson remarked, a feat that the Boxwoods Site accomplished using the existing berming requirements of Section 40.26.260. The Ordinance also recognizes the importance of public participation in the planning process, especially with regards to development that has the potential to impact the character of their community, as large industrial buildings have the potential to do. Ordinance 23-104 requires that plans proposing large industrial buildings have a public hearing with the Planning Board, as opposed to just Major Land Development Plans.

B. Implementation and achievement of the Comprehensive Plan's goals and objectives.

Ordinance 23-104 is an important step in achieving several Goals of the 2022 New Castle County Comprehensive Development Plan, by requiring site design improvements already successfully employed for warehousing in the CR zoning district and for industrial buildings >450,000 sf, applicable to plans proposing all new industrial buildings >200,000 sf of GFA. This will help the County achieve Goals 10 & 15:

Goal 10 - Land uses, transportation, and other infrastructure complement each other, and neighborhoods and areas across the county are distinctive, attractive, functional.

⁸ 2022 New Castle County Comprehensive Plan (pp. 15-16, 470-482)

comfortable, and human scale. The physical environment is high quality, inclusively designed, retains value, and is fiscally sustainable.

Goal 15 - New Castle County's infrastructure and economic and social systems are strong, and our communities are prepared for future climate-related and man-made/natural events; all residents will live in neighborhoods that are protected from negative impacts of incompatible non-residential land uses/ activity and other hazards such as flooding (discrete and cumulative); and economic growth, prosperity and change in New Castle County is equitable and accessible by all.

Much of the land zoned to permit large industrial buildings is near areas designated as Environmental Justice communities in the Comprehensive Plan. While site design will not eliminate risks /disparate impacts, it will be important in reducing adverse impacts on these communities helping the County achieve Objective 15.2:

Objective 15.2 - Reduce risk/disparate impact on sub-populations.

Much of the Heavy Industry and Industrial development adjacent to Environmental Justice communities has long existed and is at a large scale overall, as such, in many instances can construct a large industrial building without needing a Major Land Development Plan Requiring that all plans proposing large industrial buildings have a public hearing at the Planning Board to solicit public participation will also importantly expand meaningful opportunities to participate in the planning process and help the County achieve Goal 16:

Goal 16 - Participation in planning and development represents the full diversity of the county.

C. Consistency with the provisions of this Chapter and the standards for similar uses.

Ordinance 23-104 proposes to make existing site & building design requirements currently required for large industrial buildings (>450,000 sf) and warehouses (Section 40.03.339 & 40.26.260) applicable for industrial buildings >200,000 sf of GFA. It also proposes Limited Use standards for Heave Retail and Service uses that mirror those required for uses that have the potential to similarly impact neighboring residential communities (Section 40.03.339).

D. Necessity to respond to State and/or Federal legislation.

N/A

E. *Flexibility in meeting the objectives of this Chapter.*

The intent of the Unified Development Code, as stated in Section 40.01.015 is:

“to protect the interests of both current and future County residents and neighbors from the potential adverse impacts of land uses...”

“to encourage greater flexibility and more development options while minimizing development impact on current property owners and the environment...”

Section 40.01.015.A expands on these principles:

Prohibiting uses, buildings, or structures that are incompatible with the character of established zoning districts and providing suitable transitions between different community character areas to minimize the amount of incompatible land use and adverse impacts on property value;

Providing protection from noise, glare, odor, or vibration through buffers and other regulations;

As discussed above Ordinance 23-104 will expand protections for adjacent residential properties that will minimize the amount of incompatible land use and adverse impacts on residents and neighbors and their property value by reducing the threshold for a building being considered a large industrial building to 200,000 sf of GFA. Additionally, the ordinance includes provisions to provide protection from glare associated with those operations.

F. *Changes to conditions, interpretations, and/or clarifications to existing language for new uses.*

N/A

G. *Consideration of specific problems found in this Chapter.*

N/A

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **CONDITIONAL APPROVAL** of Ordinance No. 23-104, with the condition that County Council consider amending the ordinance to:

1. Clarify that:
 - The 100 feet measurement regarding heavy retail uses and residentially zoned land is to be measured from the property line;
 - The maximum building size limitation for industrial buildings only apply to proposed buildings or additions exceeding 200,000 SF of GFA, not to include renovations of existing buildings; and
 - The upgraded bufferyards, street trees, berming, and on-lot landscaping is only required where determined appropriate.
2. Revise proposed sections 40.03.339 and 40.26.260 include a provision that read as follows:
 - The site is designed to minimize the noise impacts on neighboring residential properties.
3. Establish that Light Industrial Uses in the Business Park zoning district be considered Limited Uses consistent with less intense uses (restaurants and campgrounds) subject to:
 - Increased buffer of 0.3 opacity
 - Minimum 8 ft berm
 - 500 ft minimum distance from a Light Industrial use to a parcel with a residential use or school
4. Designate that in the Office Regional zoning district Heavy Industry, where the business is less than twenty thousand (20,000) square feet require a Special Use permit.

PLANNING BOARD RECOMMENDATION

At its business meeting held on November 28, 2023, the Planning Board considered the proposed application, public testimony provided at the November 7, 2023, public hearing, and the recommendation offered by the Department of Land Use. On a motion made by Mr. Cochran and seconded by Ms. Visvardis, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 23-104 subject to the conditions made by the Department of Land Use. The motion was amended on a motion made by Ms. Cahill-Krout, seconded by Ms. Visvardis to further define what the measurement of 500 ft from the property line is measured. The amended motion to recommend **CONDITIONAL APPROVAL** passed by a vote of 7-1-0-0 (Yes: Cahill-Krout, Cochran, Daigle, Drake, Gray, Snowden, Visvardis; No: Peterson; Abstain: none; Absent: none).

In discussion preceding the vote, the following comments were offered:

Ms. Peterson inquired as to the impact that Ordinance 23-104 would have on projects such as the proposed logistics center adjacent to Whitehall (Jamison Corner). Mr. Rogers explained that the large industrial building would have to be set further back from the residential neighborhood, as well as the requirement for berming and increased buffering. Mr. Sekowski clarified that if the conditions proposed by the Department were accepted the industrial use would have a 500 ft setback from the residential land. Mr. Rogers explained that this is a tenfold increase in setback from what is currently permitted in the Business Park district. Mr. Cochran asked if the 8 ft berm requirement was changed from another value. Mr. Rogers explained that under the current revisions of the UDC that light industrial uses are by-right use without a specific requirement for berming. He further explained that less intense uses such as campgrounds and restaurants have limited use standards when adjacent to residential uses. Mr. Cochran asked if 8 ft was too short of a height. Mr. Rogers explained the rationale for the 8 ft standard. Mr. Sekowski also clarified that the 8 ft requirement was a minimum and that higher berming could be added when appropriate. Mr. Snowden expressed that he was a little uncomfortable with the discretion with regards to screening, and that there is benefit to additional screening even when not adjacent to residential uses. Mr. Rogers explained that there is a prescriptive level of buffering and screening based on the use that is required in the UDC and that the standards in 40.26.260 are in excess of those requirements. He further explained that the negotiated improvements has been part of the planning process for more than 20 years. Mr. Sekowski added that the Department recognizes that the minimum standards, in the code today are not sufficient with regards to the Business Park district and that is why the Department has conditioned its recommendation on the additional limited standards. Ms. Patibanda stated that there is no one size fits all, and that the negotiation permits additional buffering and improvements to be tailored to best address sites on an individual basis. Mr. Rogers further explained that since the ordinance requires that all plans that propose a new large industrial structure, not just Major Land Development Plans will require a public hearing, that the improvements that are negotiated between the Department and

developers are brought before the Planning Board and public for scrutiny, allow for the public to provide input towards site improvements. Mary Jacobson, attorney asked the Department for clarification as to how the separation distance was measured. Mr. Sekowski and Mr. Rogers explained that the measurement was to the light industrial use, not improvements such as stormwater management. Ms. Patibanda explained that there isn't a set definition in the UDC for what a use entails with regards to measuring separation distances. Ms. Patibanda inquired if the board had any recommendations. The board discussed a number of potential considerations but did not have a specific recommendation but did agree that it shouldn't include buffering and stormwater management facilities. Ms. Patibanda stated that the Department recognizes that the e-commerce culture is not showing signs of dissipation, and that there is another aspect of large industrial buildings where they do not end up being used for e-commerce but for light manufacturing, creating very high paying jobs for New Castle County residents. She explained that there is a very delicate balance to support economic development, good and diverse job creation, which are one of the goals in the Comprehensive Plan, while protecting adjacent communities and addressing their concerns. She further expressed that the ordinance does more than what the code achieves today, while requiring that improvements be made to developments that good developers have already volunteered in the past. Ms. Gray remarked that she was concerned that DelDOT would permit a logistic center to use a regular turnaround for truck traffic. Mr. Sekowski explained that the county does require traffic studies and sets a level of service requirement. He further explained that DelDOT requires a road network analysis to evaluate roadways and turnarounds to determine their ability to handle traffic.

Ms. Peterson expressed her concern that in some areas the ordinance did not go far enough and in others too far. She questioned the rationale for requiring a noise study being that noise levels aren't regulated during the planning process and is only addressed by calling the police after the use has been established. She further expressed concern that one size doesn't fit all, and that the ordinance is attempting to fit all of these applications into one set of standards. While there is discretion and negotiation built into the ordinance, it provides uncertainty for business looking to invest into the area. She expressed that she recommends the ordinance be sent back to the drawing board and serious considerations be given to the Committee of 100 comments and those raised by Kim Hoffman. She further stated that she does not believe that the ordinance strikes its intended balance. She further expressed that we do need to prevent another Jamison's Corner from ever happening again, while recognizing that such a facility would be perfectly fine at another location without all of the restrictions set forth in this ordinance. She recommended that the ordinance may need a distance requirement that well exceeds 100 ft or 500 ft from a residential area drawing comparisons to how incinerators have been addressed (3-mile distance), stating that perhaps a quarter of a mile might be appropriate for separating logistic centers from residencies. She expressed that if the Department was willing to work on a substitute ordinance that further addressed the business community's concerns, she'd be willing to motion table the ordinance for later consideration.

Ms. Gray remarked that there were many comments that the ordinance would hinder development, but there were never any specifics, no one brought concrete examples of projects that would be hindered from the ordinance. As a result of that, she expressed skepticism over the legitimacy of the claims.

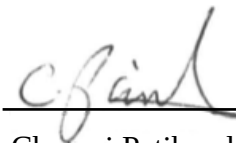
Mr. Snowden, remarked that any delay in controlling the development of large industrial buildings with the thoughtful provisions of the ordinance could result in additional projects like the Jamison Corner development.

Ms. Peterson reiterated her concerns regarding uncertainty and belief that there is a better way to address the problem.

Ms. Cahill-Krout expressed that with regards to concerns over one size fits all, the applicant has the opportunity through a public hearing to have the unique characteristics of the site to be considered.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code, Section 2603(a), the Department finds that this text amendment would promote the convenience, order, and welfare of the present and future inhabitants of this state.



Charuni Patibanda 12/15/23
General Manager date
Department of Land Use



Karen Peterson 12/13/23
Chair date
Planning Board